April 8 1870 14

Mr Mathews — ~~[illegible]~~ [illegible]

[illegible]

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~381.~~ 168

16 Jany 1869

JOSEPH W. HANCOX, LIBELLANT, APPELLANT,

vs.

THE STEAMBOAT SYRACUSE, THE ALBANY AND CANAL LINE OWNERS OF THE SAID BOAT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

~~[illegible]~~ Post

FILED DECEMBER 16, 1869.

Law Rep. - 1 Adm & Ec

p 93 - [illegible]

April 16 1870

Affirmed

Jus Swayne

SUPREME COURT OF THE UNITED STATES.

No. 381.

JOSEPH W. HANCOX, LIBELLANT, APPELLANT,

VS.

THE STEAMBOAT SYRACUSE, THE ALBANY AND CANAL LINE OWNERS OF THE SAID BOAT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Libel	1	
Amendments to libel	13	
Order amending libel	17	
Stipulation for libellant's costs	21	5
Monition	23	6
Claim of agent	25	7
Stipulation for claimant's costs	27	8
Exceptions	29	9
Answer	31	9
Hearing of cause	37	11
Charter party	39	12
Testimony of Francis Teason	53	15
Testimony of William A. Witherwax	105	31
Testimony of John Oliver	123	38
Testimony of Theodore R. Dunning	132	42
Testimony of Hiram Seward	137	44
Testimony of William A. Witherwax, recalled	145	47
Testimony of Charles Hayford	147	48
Testimony of Philip Lansing	152	49
Testimony of Smith Marshal	185	61
Testimony of Seba Drake	200	67
Testimony of John H. Coon	203	68
Testimony of William A. Witherwax	211	71
Testimony of James H. Shook	211	72
Testimony of Abraham J. Post	214	73
Testimony of Joseph Teason, recalled	215	73

	Original.	Print.
Testimony of George K. Dalzrell	217	74
Testimony of Philip Lansing	220	75
Decree in district court	221	75
Commissioner's report	223	76
Final decree	228	77
Notice of appeal	230	77
Bond for costs	232	78
Affidavit of service of notice of appeal	234	79
Petition of appeal	236	79
Exhibit X	240	—
Deposition of Francis Teson	242	80
Deposition of Charles Donohue	252	83
Consent to take testimony	256	85
Testimony of John W. Shook	258	85
Testimony of A. DeHoyt	270	88
Testimony of Benjamin Mull	274	89
Cause heard	278	90
Decree of the circuit court	280	91
Appeal to the Supreme Court	282	91
Bond for costs	286	92
Citation	290	93

1 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Thursday, the 2d day of Jan'y, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

JOSEPH W. HANCOX
v.
THE ST'BOAT SYRACUSE, HER TACKLE, &c.

1866. July 14.—The libellants files his libel ag'st the above-named st'boat, her tackle, &c., in the words & figures following, to wit:

2 (Indorsed:) Vol. . No. . United States district court for the southern district of New York. Order. , proctor for . Filed the day of , 186 .

3 In admiralty.—United States district court, southern district of New York.

To the Honorable Samuel R. Betts, district judge, &c., of July term, 1866:

The libel and complaint of Joseph W. Hancox, of Belleville, New Jersey, the charterer of the steamboat "Rip Van Winkle," against the steamboat "Syracuse," her engines, tackle, apparel, and furniture, in a cause of collision and maritime tort, respectfully sheweth unto this honorable court:

Firstly. That he files this libel in the southern district of New York, and all the circumstances hereinafter detailed occured on the tide-waters of said district, and within the admiralty and maritime jurisdiction of this honorable court.

And the steamboat "Syracuse," the colliding vessel hereinafter named, is, at the time of filing this libel, within the jurisdiction of this honorable court, to wit, at the port of New York.

Secondly. That at the time of the collision hereinafter detailed,
4 and during all the months of April, May, and June, and for the rest of the season of the navigation on the Hudson River for the year 1866, the steamboat "Rip Van Winkle," her boilers, engine, machinery, tackle, apparel, and furniture have been chartered by the owners thereof to your libellant, under a special contract in writing, duly stamped, wherein and whereby this libellant has a special property in said steamboat and appurtenances, and has sole control of her, and assumed and assuming all risks of her navigation, and undertakes at the end of the season to return her in good repair, necessary wear and tare excepted; the said "Rip Van Winkle" to run as a passenger and freight boat on the Hudson River, as one of the Troy line of steamboats, of which line the libellant is owner.

Thirdly. And this libellant further showeth that on or about the 15 day of May, 1866, the said st'amboat "Rip Van Winkle," under and in pursuance of her charter aforesaid, left the city of New York in the employment of the libellant, he having sole control of her, laden
5 with passengers and freight, well equipped and manned, and having competent officers and look-outs aboard. That the said steamboat proceeded on her voyage up the Hudson River, bound for Troy

aforesaid, and on the morning of the 16th, at 1.20 o'clock a. m., when about opposite to the buoy situated on the west bank of Percy's Reach, on the Hudson River, near Hudson on said river, your libellant's said steamboat, with all proper lights set, was run into and collided against by the steamboat "Syracuse," and was greatly injured on her larboard side, to wit, all of her deck-beams and side-house on that side for about 120 feet in length; carried away her baggage-rooms; also carried away her engineers' rooms, with all its contents; and took and carried away, damaged, or lost there room on that side, also carried away, all of the baggage lost or damaged, and great injury done to her by the said "Syracuse," in consequence of said collision.

Fourthly. That the circumstances of the collission are as follows, namely: Your libellant's said vessel had passed the Catskill Point on the Hudson River, bound upwards in the usual course; that after
6 passing said point on that course, those in charge of your libellant's vessel, and having control of her wheel, observed three several steamboats with tows attached to them; one, going up the river, named Oliver H. Arnold, with a heavy tow and hawser tier; at that time the said Arnold was well to the eastward on said river, so much so that your libellant's vessel could not go to the eastward of her; that the other two steamboats and tows were coming down the river; the one nearest to the libellant's vessel was named the Joe Johnston, with a very heavy tow and hawser tier attached, coming down the river close along the west bank of the channel, so that your libellant's vessel could not go between her and the bank. The third steamboat was the "Syracuse," and was following the same course down the river as the Joe Johnston, but a little to the windward of her, and showing lights which indicated she had a large tow with her. That the usual course for passenger and freight steamboats going up the river after passing Catskill Point,
7 is to follow the west bank up until about abreast of Brandon
Hollow, then to take a course for the foundry lights at Hudson, on the east bank of the river. Following this course takes vessels well over to eastward, then they straighten up and follow into the main channel between the middle ground and Athens. On the evening in question, your libellant's vessel followed such usual course, after passing Catskill Point up along the west land, & just before getting abreast of the Brandon Hollow your libellant's pilot blew one long blast of the steam-whistle, which is a signal to approaching steamboats for each to go to the right, and was a proper signal under the circumstances of the case. This signal was answered immediately by the "Joe Johnson" and the "Syracuse" by a similar whistle, which is an indication that such signal is agreed to on all hands. This gave the libellant's vessel the right to follow out the usual course that is there in that part of the river, to go to the right and take a course for the Hudson foundry lights, and keep to the right until they pass. Your libellant's vessel did
so, and in doing so got well over to the eastward, and as near the
8 course of the propeller Arnold and her tow as was safe to do. In
following out this course your libellant's vessel passed the Joe Johnson and her tow in safety, so that the "Joe Johnson" was more than 500 feet to the westward of your libellant's vessel, leaving plenty of sea-room for the Syracuse to navigate down the river; instead of doing so, however, after your libellant's vessel's course had been well developed, and she had gone ⅓rd of the way or more through the reach, on a course pointing to the Hudson foundry lights, and when about oppisite the buoy which is on the west bank of the channel, as your libellant's vessel could not go and clear the propeller Arnold and her tow, the said Syracuse altered her course with a sudden sheer with

any necessity for doing so, to the windward, (the wind on that night being southeast,) and, with her left-hand tow fastened, ran into and collided against the "Rip Van Winkle," striking her on the larbord side of her port paddle-box and aft of her fo'ward gangway, doing the great damage as aforesaid. The particular part of the Syra-
9 cuse's tow coming in contact with your libellant's vessel was the
bluff of the port bow of a new barge named the Colgate, which was at that time fastened on the larboard side of the "Syracuse," square along side of the Syracuse's fenders, and solely propelled by the navigating power of the "Syracuse's" engines, and solely under the control of the officers and crew of the Syracuse.

Fifthly. That such collision was the result of the negligence and unskillfulnes of those navigating and directing the motive power and navigation of the Syracuse in this, to wit, she had lights up for a heavy tow, whereas she had in tow only two barges whose draft of water was great, and which rendered it necessary for the Syracuse to have at her wheel at least two competant pilots or helmsman, whereas she only had one man, the other wheelsman being, as your libellant is informed and believes, not at the wheel; she had only her fo'ward and [and] after lights set—none on her paddle-boxes; she was going under too much momentum, so as not to be able to regulate her helm or steerage-way. She was also not provided with competent look-outs on board, and her pilot
10 was inexperienced; she did not follow out the signal agreed on
between all the vessels, as before stated.

Sixthly. And your libellant further showeth that in conseq'ence of such collision he suffered and sustained about twelve thousand dollars in damages in repairing and refiting the "Rip Van Winkle," readjusting her machinery, and in paying for baggage of passengers damaged or lost; and for the loss sustained by him in conseq'ence of the loss of services of the said "Rip Van Winkle," while she was necessarily undergoing repaires to refit and replace her on the Troy line of steamboats owned by your libellant; that your libellant applied to the owners or agent of the Syracuse for the payment of, or to adjust and compensate his aforesaid damages; but the said owners refused to do so or to make any recompense therefor.

Seventhly. And your libellant further sheweth that at the time of the collision aforesaid, the night was sufficiently light to admit of seeing steamboats with proper lights set several miles off. And the said
11 Syracuse on that night could, if she had a proper look-out and
proper lights set, have distinguished your libellant's vessel, and had her course seen or exhibited miles off, and in sufficient time to have avoided running into the "Rip Van Winkle," if she was properly managed.

Eightly. And your libellant further sheweth that all and singular the circumstances aforesaid occurred on the tide-waters of the Hudson River, and within the southern district of New York, and the admiralty and maritime jurisdiction of this honorable court.

Wherefore your libellant prays that a writ of attachment or monition may issue out of and under the seal of this honorable court, directing the marshall of the southern district of New York to attach said steamboat Syracuse, her engines, tackle, apparel, and furniture, and that all persons having right or interest in her may be cited to appear and intervene for their said interest, and that she may be condemned and sold to pay your libellant's damages, and that your libellant may have
12 a decree for the same, with his costs in this behalf most wrong-
fully sustained; and your libellant will ever pray, &c.

J. W. HANCOX.

Sworn to before me this 14th day of July, 1866.
[SEAL.] A. C. WILMAITH,
Notary Public.

D. & S. McMAHON,
Proctors for Libellant, and Advocates.

[Revenue stamp.]

(Endorsed:) 20—75. In admiralty. U. S. district court, southern district of New York. Joseph W. Hancox vs. Steamboat Syracuse, her tackle, &c. Libel. D. & S. McMahon, lib't's proctors.
Filed July 14, 1866.

13 In admiralty.—United States district court, S. D. of New York.

JOSEPH W. HANCOX
against
THE STEAMBOAT SYRACUSE, HER TACKLE, &c.

We consent that an order be entered in the above-entitled cause that the libellant amend his libel in the following particulars, to-wit:

1st amendment. After "proper lights set," in the 3rd allegation of the libel, insert, to wit, required by law and the rules of the supervising inspectors.

2nd amendment. Insert in the fourth allegation of the libel, after "on a course pointing to the Huson foundry lights," the following, viz: having passed the Arnold and her tow.

3rd amendment. Insert in the said fourth allegation, after "your libellant's vessel could go and," the word "keep."

4th amendment. Insert in the same fourth allegation, before the words "before the said Syracuse altered her course," the following, viz:
14 within about one length of the steamboat Rip Van Winkle from the east flat.

5th amendment. Insert in the same fourth allegation, after the words sudden sheer without any necessity for doing so, the words "in a southeasterly direction."

6th amendment. After "paddle-boxes," in the fifth allegation, insert "her stern light was fixed abaft of her smoke-stack and paddle-box, so that it could not be seen without her sheering over two points, and during her aforesaid sheer it was hidden from the view of those on your libellant's vessel."

And that on filing this consent and entering the said order, the said libel be amended by the clerk of this court accordingly, nunc pro tunc, and that the claimants have leave to withdraw theer exceptions and answer within two weeks from the entry of this order & service of a copy of the amended libel, or that in case of not answering, default, nisi, &c., &c., be entered.

The costs of this amendment and of said exceptions to be made
15 costs in the cause to abide event.

New York, Oct. 19, 1866.

D. & T. McMAHON, *Proctors Lib't.*
BENEDICT, TRACY & BENEDICT,
Proctors for claim'ts.

Endorsed: 20—75. In admiralty. United States district court, S. D of N. Y. Joseph W. Hancox & the s'tb't Syracuse, her tackle, &c. Consent to amend libel. D. & S. McMahon, proctors lib't.
Filed Oct. 23rd, 1866.

16

17 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Teusday, the 23rd day of October, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable , district judge.

JOSEPH W. HANCOX
against
THE STEAMBOAT SYRACUSE, HER TACKLE, &c.

On reading and filing the consent of the proctors for libellant and claimants in the above-entitled action, and on motion of D. & S. McMahon, proctors for the libellant therein, it is ordered that the libel of the libellant be amended in the following particulars, to wit:

After "proper lights set," in the 3rd allegation of the libel, insert, to wit: "required by law and the rules of the supervising inspectors."

18 Insert in the fourth allegation of the libel, after "on a course pointing to the Hudson foundry lights," the following, viz: "having passed the Arnold and her tow."

Insert in the said fourth allegation, before the words "before the said Syracuse altered her course," the following, viz: "within about one length of the steamboat Rip Van Winkle from the east flat."

Insert in the same fourth allegation, after the words "sudden sheer without any necessity for doing so," the words "in a southeastwardly direction."

After "paddle-boxes," in the sixth allegation, insert "her stern light was fixed abaft of her smoke-stack and paddle-box, so that it could not be seen without her slewing over two points, and during her aforesaid sheer it was hidden from the view of those on your libellant's said vessel."

And it is further ordered that the said libel be amended by the clerk of this court accordingly, nunc pro tunc, and that the claimants have leave to withdraw their exceptions and answer within two weeks from the entry of this order and service of a copy of the amended libel, or
19 that in case of not answering default, nisi, &c., be entered.

The costs of this amendment and of said exceptions to be made costs in the cause to abide event.

WM. D. SHIPMAN.

(Endorsed:) 20—75. U. S. district court, S. D. N. Y. Joseph W. Hancox vs. the s'tb't Syracuse, her tackle, &c. D. & S. McMahon, proctors for lib't.

Filed October 23rd, 1866.

20

21 District court of the United States for the southern district of New York.

Filed the 14 day of July, 1866.

Stipulations for libellant's costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 14th day of July, in the year of our Lord one thousand eight hundred and sixty-six, by Joseph W. Hancox against the st. Syracuse, her engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer, her engines, tackle, &c., may be condemned & sold to pay the demands of said libellant, and the said libellant and Michail Murphy & John McCurdy, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred & fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

J. W. HANCOX.
MICHAEL MURPHY.
JOHN McCURDY.

Taken and acknowledged this 14 day of July, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Michael Murphy & John McCurdy, part to the above stipulation, being duly sworn, doth depose and say, that he resides in the south. dist. of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

MICHAEL MURPHY.
JOHN McCURDY.

Sworn to this 14 day of July, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 14 day of July, 1866.

, *Clerk.*

22

23 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 14th day of July, in the year of our Lord one thousand eight hundred and sixty-six, by Joseph W. Hancox agst. the str. Syracuse, her engines, tackle, &c.—collision, $12,000—for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 31 day of July, inst., at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 14 day of July, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

GEO. T. BETTS, *Clerk.*
D. & S. McMAHON,
Proctor for Libellant.

24 In obedience to the within monition, I attached the therein described, on the day of and have given due notice to all persons claiming the same, that this court will, on the day of , inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated 23 July, 1866.

ROBT. MURRAY, *U. S. Marshal.*

(Indorsed:) Vol 20, page 75. Southern district of New York, United States district court. Joseph W. Hancox vs. the str. Syracuse, her engine, tackle, &c. Monition ret'ble, July 31st, 1866. D. & S. McMahon, proctor for libellant.

Filed Aug. 7, 1866.

I hereby depute L. Bates to execute the within process.

Dated 14 July, 1866.

R. MURRAY, *U S. Marshal.*

25 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Tuesday, the 17 day of July, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Samuel R. Betts, district judge.

THE ST'B'T SYRACUSE
asm.
JOSEPH W. HANCOX.

And now, Jeremiah J. Austin, intervening as agent for the interest of the Albany & Canal Line in the said steamer, appears before the honorable court and makes claim to the said steamer, &c., as the same are attached by the marshal, under process of this court, at the instance of Joseph W. Hancox, and the said Austin avers that said Lane was in possession of the said steamer at the time of the attachment thereof, and that the company above named is the true and bona-fide owner of the said steamer, and that no other person is the owner thereof, and the said company the true and lawful bailee thereof, as owner; wherefore he prays to defend accordingly.

ALBANY & CANAL LINE,
By J. J. AUSTIN, *Agt.*

BENEDICT, TRACY & BENEDICT,
Proctor for Claimant.

26 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Jeremiah J. Austin, being duly sworn, deposes and says that he resides in the city of Albany; that he is the agent of the Albany & Canal Line above named; that the owners of said steam. are a corporation having an office in this city & the city of Albany; and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamer; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

J. J. AUSTIN.

Sworn to and subscribed this 17 day of July, A. D. 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

(Indorsed:) Vol. . No. . United States district court for the southern district of New York. asm. , proctor for claimant. Claim of .

Filed the 17 day of July, 1866.

27 District court of the United States for the southern district of New York.

Filed the 14 day of July, 1866.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 14 day of July, in the year of our Lord one thousand eight hundred and sixty-six, by Joseph W. Hancox against the steamer Syracuse, her tackle, engine, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer, &c., may be condemned & sold to pay the demands of the libellant, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the cla'm'ts or their surety, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands. And whereas, also, a claim has been filed in said cause by the Albany & Canal Line, owners, per Jeremiah J. Austin, agt.:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred & fifty dollars, conditioned that the cl'm'ts above named shall pay all costs and expenses which shall be awarded against by the final decree of this court or, upon an appeal, by the appellate court.

ALBANY & CANAL LINE,
By J. J. AUSTIN, *Agt.*
J. J. AUSTIN.
JOHN H. MONTEITH.

Taken and acknowledged, this 17 day of July, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Jeremiah J. Austin & John H. Monteith, parties to the above stipulation, being duly sworn, doth each depose and say, that he, Austin, resides in the northern, & he, Monteith, in the southern dist. of N. Y., & that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

J. J. AUSTIN.
JOHN H. MONTEITH.

Sworn to this 17 day of July, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 17 day of July, 1866.

G. F. BETTS, *Clerk.*

28

29 United States district court.

JOSEPH W. HANCOX
vs.
THE STEAMER SYRACUSE.

The claimants herein except to the libel in this case for the following grounds:

First. That it does not state with sufficient clearness what was the course of the Rip Van Winkle at the time of the collision.

Second. That it does not state what lights she had set.

Third. That it does not state how far from the east edge of the channel the Rip Van Winkle was at the time of the collision.

Fourth. That it does not state wether she had passed the Arnold or her tow, or was passing her, or had not reached her at the time of the collision.

Fifth. That it does not state what lights were seen on the Syracuse and her tow.

30 Sixth. That it does not state what was the course of the Syracuse at the time of the collision.

BENEDICT, TRACY & BENEDICT,
Claimants' Proctors.

(Endorsed:) 20—75. U. S. district court. Joseph W. Hancox vs. the steamboat Syracuse, &c. Exceptions. Benedict, Tracy & Benedict, claimants' proctors, 76 Wall street, New York.

Filed August 17th, 1866.

31 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The answer of the Abany and Canal Line, owners of the steamboat Syracuse, to the libel and complaint of Joseph W. Hancox against said steamboat, alleges as follows:

First. They admit the allegations of the first article of the libel.

Second. As to the allegations of the second article they have no knowledge whatever, and they leave the libellant to his proof thereof.

Third. They admit that the Rip Van Winkle left New York on the evening of May fifteenth, one thousand eight hundred and sixty-six, but wether she was in the employment of the libellant, or he had sole control of her; or wether she was well equipped and manned, or had competent officers and look-out aboard, or wether she had the lights set, which are alleged in the libel, or sustained the damage set forth in the third article thereof, they have no knowledge, and therefore deny the same and leave the libellant to his proof thereof.

32 Fourth. These respondents have no personal knowledge as to the allegations of the fourth article of the libel, but believe that they are in many respects incorrectly and untruly stated; and they deny

each and every of the same except so far as they are admitted in the following statement of the case, which they aver to be correct and true:

The steamboat Syracuse was at the time on a voyage from Albany to New York. She had a large barge in tow on each side of her. She was properly equipped and manned, and had a competent master and competent pilots and look-out and crew on board, who properly and carefully performed their respective duties, and she had lawful and proper lights set and burning, which are the lights which are usually and properly carried by such vessels on the Hudson River, and were seen by those on board the Rip Van Winkle, and which should have informed and did inform those on board the Rip Van Winkle of the character of the approaching vessel in ample time to have prevented said collision with proper care and skill.

33 The Syracuse had also a competent pilot at her wheel, which was all that was required, and the Rip Van Winkle and her movements were seen in due time and as soon as she became visible by those in charge of the Syracuse.

The steamboat Joe Johnson, with a large tow, was going down the river ahead of the Syracuse, and was not going so fast as the latter, so that the Syracuse had been gaining upon her, and had nearly come up to her when the Rip Van Winkle was seen coming up the river.

The channel of the river where collision took place is about eighteen hundred feet wide; the Joe Johnson with her tow was on the west side of the channel as close as she could properly go; the Syracuse was as near to her and her tow as was proper for her to go, and on the eastern side of the channel was the propeller Oliver A. Arnold, coming up the river, and about six hundred feet or more to the eastward of the Syracuse, and about opposite to her at the time of the collision, leaving plenty of room for the Rip Van Winkle, if she had been properly navigated, to have passed clear of the Syracuse.

34 As the vessels approached each other one whistle was blown by each, which signified that each should pass to the right, and in accordance therewith the Syracuse was kept as close to the larboard quarter of the Joe Johnson as was safe to go, and the engine of the Syracuse was stopped, and, the tide being flood, her way had entirely ceased before the collision.

There was, therefor, no difficulty in the Rip Van Winkle avoiding a collision if she had kept further to the east, or stopped and backed, but instead of doing this shee failed to sheer soon enough and far enough to the east, and did not stop her engine till after the collision, but came on with great force and violence, and ran against the barge which was on the larboard side of the Syracuse, doing great injury and damage to the said barge, and receiving damage herself.

And the claimants allege that the Rip Van Winkle did not pursue the usual and proper course, but was to far over towards the west shore, and did not sheer quick or far enough to the eastward as she should have done.

(Signed.) ALFRED D. HOYT,
Agent for Claimants.

Sworn to before me this 17th day of Nov., 1866.

WILLIAM D. JONES,
35 *Notary Public N. Y. County.*

BENEDICT, TRACY & BENEDICT,
Claimants' Proctors,
E. C. BENEDICT, *Advocate.*

(Endorsed:) 20—75. U. S. district court, south'n district N. Y. Joseph Hancox against the Albany & Canal Line, owners of steamboat Syracuse. Answer. Benedict, Tracy & Benedict, cl'm'ts' proctors, 76 Wall street. Filed November 17th, 1866.

36

37 At a term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Tuesday, the 22d day of Jan'y, in the year of our Lord one thousand eight hundred and sixty:

Present, the Honorable W. D. Shipman, district judge.

JOSEPH W. HANCOX
v.
THE ST'BOAT SYRACUSE, HER TACKLE, &C.

This cause being called in its order on the calendar, ordered hearing. Pleadings read.

Evidence for lib'l'nt:

Charter-party A	Read.
Francis Teson	Sworn.
Wm. A. Witherwax	"
Statement B	Read.

Obj. to.

Cause adj'd till to-morrow.

JAN'Y 23.—Cause cont.

Evidence for lib'l'nt:

John Oliver	Sworn.
Theodore R. Dunning	"
Hiram Seward	"
W. A. Witherwax	Recalled.
Chas. Hayford	Affirmed.

Evidence for cl'm'ts:

Philip Lansing	Sworn.
Smith Marshall	"
Seabra Drake	"
John H. Coon	"

Evidence for lib'l'nt:

James H. Shook	"
Abram G. Post	"
Francis Teason	"

38 Evidence for cl'm'ts:

Geo. K. Dalzell	Sworn.

Cause to be argued on Saturday, Feb'y 2.

FEB'Y 16.—Cause cont'd.

Mr. E. C. Benedict argues for cl'm'ts.
Mr. D. McMahon " " lib'l't.
C. A. V.

(Indorsed:) Vol. , No. . United States district court for the southern district of New York. Order. , proctor for . Filed the day of , 186 .

39 This charter-party, made the twenty-seventh day of March, one thousand eight hundred and sixty-six, between Ovid S. Simmons and Company, of Saugerties, Ulster County, New York, owners of the steamboat called the Rip Van Winkle, her engines, boilers, tackle, apparel, and furniture, of the burthen of six hundred and twenty registered tonnage or thereabouts, now lying in the port of New York, parties of the first part, and Joseph W. Hancox, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the covenants and agreements hereinafter mentioned to be performed and kept by the said party of the second part, do hereby covenant and agree on the chartering of the said steamboat Rip Van Winkle, her engines, &c., unto the said party of the second part, from and including the twenty-seventh day of March, one thousand eight hundred and sixty-six, until the first day of December, one thousand eight hundred and sixty-six, or as much earlier than the last-named
date as may by the parties of the first part be deemed necessary,
40 prudent, or advisable, in order to avoid or prevent the said steam-
boat being shut up or closed in by the ice, or otherwise receiving
damage therefrom or thereby.

The said steamboat to be used as a freight and passenger boat between New York, Albany, and Troy.

That the following are the terms and conditions of the said charter, that is to say:

That the said parties of the first part do hereby engage to deliver the said steamboat to the said party of the second part on the said twenty-seventh day of March, one thousand eight hundred and sixty-six, at pier 40 N. R., in the city of New York, in all respects and conditions as she now lies, and from which condition no alterations or changes shall be made by the party of the second part without first obtaining from the party of the first part express written permission to make such alterations, changes, or additions; and all such alterations, changes, or additions as may be so made and done by the party of the second part, shall be at his own proper cost and expense; and, further, that all such alterations, changes, or additions shall, upon the terminotion of this
charter, be restored, so that the said boat shall be in the same
41 state, situation, condition, and appearance as at the commence-
ment of the charter, by and at the proper cost and expense of the
party of the second part, if such restoration should be required by the
parties of the first part.

And the said party of the second part hereby agrees to accept and receive the said steamboat on the said last mentioned day, and to pay to the said parties of the first part the sum of ninety dollars ($90) per day (exclusive of Sundays) for the charter of said steamboat for each and every day of the time specified in this charter, excepting such times as she shall be disabled by disarrangment of machinery or injury to her boilers, which shall prevent her from making her regular trips; and that such payments shall be made on the first day of each and every month until the expiration of this charter; and whatever charter-money shall be due on the day of the expiration of this charter shall be then paid in full to the parties of the first part.

And the said party of the second part further covenants and agrees that he will coal and provision the said boat and man the same at his own cost and expense, and that he will hire and employ the present
captain, engineers, stewardess, barkeeper, and baggage-master
42 and pilots now connected with the boat, all of whom have been
already engaged by the parties of the first part, and whom shall

perform simillar duties, and each shall stand in and occupy the same positions as they stood in and occupied each severally during the season of 1865, and will pay such parties during the period of this charter such sum or sums of money as, and for their wages per month as, are now paid by the New Jersey Steamboat Company to persons employed by them in simillar positions, and that such pay or wages shall commence and date from the day of the date of this charter, provided, however, and it is hereby understood that the second pilot may be hired or not, under this arrangment, as the party of the second part shall think proper; and provided also in respect to the hireing of the said bar-keeper and baggage-master, that he shall give satisfaction to the party of the second part, and perform his duties faithfully.

43 He further covenants and agrees that he will keep the said steamboat, her tackle, apparel, furniture, and appurtenances (water-wheels included) fully repaired at his own cost and expense, only saving and excepting therefrom her engines and boilers, which are to be kept in repair by the said parties of the first part at their cost and expense; but whatever grate-bars are required for the boilers, as well also as a full and regular supply of greases, tallows, oils, packings, and lines, and all other things that may be necessary and requisite for the good operation of the engines, appendages, and machinery, as also for lamps and lights, shall be furnished and paid by the said party of the second part at his own cost and expense.

That said party of the second part further covenants and agrees the he will furnish the boat with a full supply of fresh water at both ends of the route.

44 And the said party of the second part further covenants and agrees that he will indemnify and save the said parties of the first part harmless of and from all loss and damage to the said steamboat, her engines, boilers, tackle, apparel, and furniture which shall or may be caused or occasioned by reson of any collision, and from all and every liability to third parties by reson thereof, or any liabilities growing out of any such collision, including costs, charges, and expenses of prosecuting or defending any suit or suits brought thereon; and that he will deliver up the said steamboat, at the expiration of this charter, free, clear, and discharged of and from all and evry claim of whatever kind and nature which shall or may be a lien upon the said vessel, her engines, boilers, &c., or otherwise a charge thereon. It is understood that such claims and liens refer only to such as shall be incurred by the said party of the second part.

And it is further understood and agreed that in case the charter-money, which shall become due and payable under the aforesaid provisions of this charter, shall not be paid on the first day of any month whereon the same shall become due and payable, and should the same remain unpaid and in arrear for the space of three days thereafter, then the parties of the first part may, in their option, cancel this charter, and recover of the party of the second part the charter-money up to and including the day of the cancellation thereof.

45 And it is hereby further understood and agreed that the said parties of the first part shall have the right and power, notwithstanding any in this charter contained, at any time during the continuence thereof, to sell and convey the said steamboat, her engines, boilers, tackle, apparel, and furniture without notice; but in case of a sale thereof, the said parties of the first part may serve a notice in writing on the party of the second part, seven days, requireing a surrender thereof, and thereupon, at the expiration of the said seven days, the said boat,

her engines, boilers, tackle, apparel, and furniture, shall forthwith be delivered to the parties of the first part in the same condition and oider as is stipulated and provided for in and by the provisions of this charter shall thereupon cease.

It is, however, understood and agreed that the party of the second part shall have a right to purchase the said steamboat at a price to be agreed upon between the parties hereto, in the event any propositions for sale of the entire boat are made to the party of the first part during the continuence of this charter; provided the party of the second part shall
46 agree with the parties of the first part upon the price thereof within 24 hours after the parties of the first part shall offer the same to the parties of the second part.

It is also understood and agreed that the said parties of the first part shall be at liberty, and have the power, at any time during the continuence of this charter, to sell and convey any interest in the steamboat, her engines, &c., which shall be less than their entire property and interest therein, without giving any notice to the party of the second part; provided, however, such sale be made subject to the terms and conditions of this charter-party.

And it is hereby covenanted and agreed by the party of the second part that he will forthwith repair all damages and injuries which the said steamboat, her engines, boilers, tackle, apparel, and furniture shall or may sustain during the continueence of this charter, by reason of any collison or rubbing, or rubbing against any other vessel or any pier, wharf, rock, shoal, or ice, so as to restore the same to the like order and condition as the same are now in.

47 And it is hereby further covenanted and agreed by the party of the second part that he will deliver up the said steamboat, her tackle, apparel, and furniture, (her engines and boilers excepted,) upon the termination of this charter, either by the expiration thereof by lapse of time, or the termination thereof by reason of a sale of the boat as above provided, or by the reason of the non-fulfilment of any of the provisions thereof on the part of the party of the second part to the said parties of the first part, at such pier in the city of New York as shall be designated by the parties of the first part, in like good order and condition as when received, natural were and tear alone excepted, and also all the articles, goods, and effects mentioned and enumerated in the schedule hereto annexed in like good order and condition as when received.

It is also hereby further understood and agreed, that the parties of the first part shall keep the said steamboat insured against fire, and that the said party of the second part shall pay all charges against the vessel which are due and payable under the laws of the United
48 States for customs, revenue, charges, and other fees and expenses, excepting, however, all charges for inspecting the boilers.

And it is further agreed that the said party of the second part shall, during the term of this charter, have the entire and exclusive management and control of the said steamboat, subject to the provisions and conditions of this charter, excepting her engines, boilers, and appendages, which are to be under the exclusive management and control of the parties of the first part.

And it is further agreed that the expenses of the drawing of this charter shall be borne by the parties hereto in equal propotions.

To the performance of all and evry of the forgoing covenants and agreements, the said parties of each to the other, do hereby bind themselves, their heirs, executors, administrators, successors, and assigns in the penal sum of .

In witness whereof, the said parties hereto have enchangeably set their hands and seals the day and year first above written.

[Two five-dollar internal revenue stamps, cancelled.]

49 OVID S. SIMMONS & CO. [SEAL.]
J. W. HANCOX. [SEAL.]

Sealed and deliverd in the presence of—
CHARLES D. INGERSOLL.

For and in consideration of the above-mentioned chartering of the said steamboat "Rip Van Winkle," and of the sum of one dollar, I do hereby become surety for the punctual payment of the charter-money and performance of the covenants in the above-written charter mentioned to be paid and performed by the said J. W. Hancox, as therein specified, and if any default should at any time be made therein, I do hereby promise and agree to pay to the said Ovid S. Simmons & Company, the said charter-money or any arrears thereof that may be due, and fully satisfy the conditions of the said agreement, and all damages that may occur by reason of the non-fulfilment thereof.

Given under my hand and seal, the day of , 1866.
[SEAL.]

50 (Endorsed:) Ovid S. Simmons and Company to J. W. Hancox. Charter-party. Ex. No. A. Jan'y 22nd., 1867. W. F. B. Owen, Gray & Owen, attorneys, &c., 72 Wall st.

51 U. S. dist. court, fourth dist. of N. Y.

JOSEPH W. HANCOX,
v.
THE STEAMBOAT SYRACUSE, HER TACKLE, &c.

Stenographr's minutes of testimony, Jan'y 22d & 23, 1867.

52

53 D. & T. Mc Mahon, counsel for libellants.
Benedict, Tracy & Benedict, counsel for cl'm'ts.

Mr. McMahon read the libel, & Mr. Benedict, the answer.

Mr. McMahon put in evidence the charter-party of the Rip Van Winkle, dated M'ch 27, 1866, marked Exhibit A, Jan'y 22d, 1867.

Francis Teason sworn on behalf of libellants:

Examined by Mr. McMahon:

Q. You were pilot of the Rip Van Winkle at the time of the collision?
A. Yes, sir.
Q. What time did this collision take place?
A. Between 1 and 2 o'cl'k on the morning of the 16th of May.
Q. (By the court.) What kind of wheather was it?
54 A. The wind was southeast, blowing fresh, but not a dark night.
Q. (By Mr. McMahon.) Starlight?
A. By specks we had starlight, and I rather guess it was starlight ai that time.
Q. How far off could you see objects readily?

A. I could see an object from the time we got in sight of Roger's Island, up as far as Athens.

Q. How far is that?

A. Four and a half or five miles.

Q. Which way was your vessel bound that night?

A. She was bound to Troy from N. Y.

Q. You started from N. Y. when?

A. Six o'cl'k in the evening.

Q. At that time how were you laden?

A. We were loaded with freight and passengers.

Q. Were you on duty in the pilot-house at the time of this collision?

A. Yes, sir.

Q. Had you charge of the wheel?

A. I had.

Q. When had you taken charge of the wheel?

55 A. I came on watch down at the 9-mile tree—below Catskill. That is about 9 miles from Hudson.

Q. How far is Catskill from Hudson?

A. About five miles.

Q. Who had been on duty before that?

A. Mr. Witherwax.

Q. Had you a regular license as pilot?

A. Yes, sir.

Q. What class pilot?

A. First-class.

Q. Did you get first-class wages?

A. Yes, sir; I suppose I did

Q. How much?

A. I got what they pay in the regular lines.

Q. How much?

A. $1,200 for the season.

Q. In what line was this boat running at that time?

A. She was running in the New York and Troy Steamboat Line.

Q. Who was the proprietor of that line at that time?

A. Joseph W. Hancox.

Q. State the circumstances of the collision.

56 A. I came on watch at 1 o'cl'k, I suppose; when they called me, I got up and washed myself, and came into the pilot-house, and took the wheel. Then we were between the 9-mile tree, or just above the 9-mile tree below Catskill, and the wind was southeast, with a flood tide, and blowing a good, taut breeze; probably a vessel would go up before the wind, with the tide under foot, ten knots an hour.

Q. (By Mr. Benedict.) A sailing vessel?

A. Yes, sir; and when we got up to Catskill, or above Catskill, I saw the lights of some tow boats coming down, or supposed they were tow-boats when I first saw them. We kept on our usual course, and followed the west land along up until I got to Brandon's Hollow; I then blowed my whistle once—gave it a long blow—for her to take the right of it. The Joe Johnson and the Syracuise answered the whistle by giving one blow the same as I did. I then passed the Joe Johnson.

57 Q. How was that response understood upon the water?

A. If two vessels are approaching, we blow one whistle; that is to take the right of the track—each going to the right.

Q. And when you blow the whistle first, and it is answered, it is understood that the signals are agreed upon on all sides?

A. Yes, sir. We passed the Joe Johnson, and on her starboard side

was the Oliver A. Arnold, bound up with a tow. I went close to his hawser tier, probably within 50 or 75 feet of his hawser tier. The tide being flood tide, and the wind southeast, he was working to the windward, and the tier tailed off from him, so that I didn't go as close to the Arnold as I did to his hawser tier. I went off from the Arnold probably 150 feet—may be not as far as that—and just as I got abreast, or just before I got abreast of the Arnold, the Syracuse bound down on our larboard hand altered her course before I got to the Arnold;
58 altered her course and came right head towards us. I didn't slow the boat, nor I didn't stop her.

Q. Why not?

A. I let her keep her regular gait, and when I seen her——

Q. Why didn't you slow the boat or stop her?

A. I though I could outrun her, when I seen her coming. I thought in the position she was that I could get by her, and I hove my wheel over aport, and that took us hard off, more to the eastward. I thought I would let her get as far to the eastward as I could, and did so. Then the Syracus hit us.

Q. Where did she hit you?

A. She hit us on the larboard side, just aft of the forward gangway.

Q. What part of the Syracuse hit you?

A. It was the barge that she had along side of us that hit us; hit us with the bluff of her bow, right on the turn of her bow.

Q. Which bow?

59 A. Her larboard bow.

Q. State how she came into you, and what effect this coming into you had.

A. She came into us quartering like this, (illustrating:) Suppose this is the Rip Van Winkle going up, the Syracuse going down struck us that way. We were heading to the east, and she struck us right aft of the forward gangway and forward of the paddle box; and after she struck us it carried away our deck beams and side house and waterwheel, and the like of that; that disabled our engine, and then we drifted; till, in time, we drifted ashore; or we let our anchor go before we got ashore, but our anchor would not hold us, and we drifted ashore; we drifted about twenty minutes or half an hour after she struck us before we went ashore.

Q. What became of the Syracuse after she got into you in this way?

A. I noticed she was detained some below.

60 Q. Where did she go after she struck you, if anywhere?

A. She went off to the westward after she hit us.

Q. Where did she land; where did she come up?

A. I could not say. Soon after we got ashore I seen her lights disappear—go on out of sight.

Q. At the time you passed the Oliver A. Arnold, how much breadth of channel was there between the Arnold & the Johnson?

A. I should thing there was 500 feet at the least calculation.

Q. How much room was there for the Syracuse to go between you & the Joe Johnson?

A. 350 feet.

Q. Had you passed the Joe Johnson?

A. We had gone by her. The Joe Johnson was bound down the river, and the Arnold going up, and when we came to them these two boats were in the act of passing—the Joe Johnson and the
61 Arnold were—and we had passed the Joe Johnson, and at the time we passed the Joe Johnson we lapped the Arnold's hawser

tier, and passed her, and just as we got by the Arnold the Syracuse came into us, but when we got up to the Arnold, I seen her alter her sheer.

Q. You had passed the Arnold before the collision took place?

A. Yes, sir.

Q. How far had you passed the Arnold?

A. I should think it might have been two of our lengths.

Q. How long was your boat?

A. Well, I believe she is 260 or 275 feet keel; I am not certain as to the length.

Q. About 260 feet?

A. Yes, sir.

Q. Had you approached the east bank any before passing the Arnold?

A. Yes, sir; and as soon as I saw the Syracuse alter her sheer, I hove
our wheel over aport and let her run to the eastward as fast as I
62 could.

Q. The particular point I want to come at is, how much width of channel was there between the course of the Johnson, which was ahead of you, and your course at the time you had passed the Arnold; and had you got in front of the Arnold?

A. We were passed the Arnold when the Syracuse hit us.

Q. Had you got ahead of her track at all?

A. Yes, sir; we were quartering across her track—across the Arnold's track.

Q. That was the time you went to the eastward to avoid the collision?

A. Yes, sir.

Q. Was there any necessity for the Syracuse taking the sheer that she did?

A. No, sir.

Q. Explain that—what she could have done.

A. She could have kept her course, and followed right down the same
course that the Joe Johnson was going, and would have given us
63 plenty of room to have gone by; all that was necessary for her to
clear us would have been to have kept her course.

Q. State the nature of this sheer, whether it was a sudden sheer.

A. Yes, sir; she sheared right off; took a very sudden sheer right off towards us.

Q. What lights had the Syracuse on that night?

A. She carried a head light and a stern light.

Q. Any other lights?

A. No, sir.

Q. No port or starboard light?

A. No, sir.

Q. Explain how her lights are situated.

A. Her forward lights are set on the billet-head, or the stem; her stern lights are hoisted up to the flag-staff aft.

Q. The forward light is put on a billet head on the stem?

A. The stem is a billet-head.

Q. Put on top of the stem?

A. Yes, sir; stands on top of the stem. I suppose her lights forward
stood on the stem, or stood inside the stem on the rail; but she
64 showed her head lights and stern lights.

Q. Explain where her stern lights was situated.

A. The stern lights are hoisted up aft on her flag-staff.

Q. Where was her flag-staff?

A. All tow-boats don't carry a flag-staff aft; they carry it in forward of their bitt to be out of the way of their towing hawser. I suppose her flag-staff stands forward of the extreme stern probably 75 feet, may be not over 50 feet—I don't know the exact distance.

Q. Is it not on the stern?

A. No, sir.

Q. Is it forward of the smoke-stack?

A. It is aft of the smoke-stack; some of them carry their flag-staff on the upper deck. I didn't notice how her flag-staff was.

Q. On this night the light was aft of the smoke-stack?

A. I suppose it was.

Q. Are the smoke-stacks forward of the wheel-house?

65 A. Her smoke-pipe is aft of her wheel-house.

Q. What lights had you on that night?

A. We had two signal lights aft, hoisted on the flag-staff, and two lights forward.

Q. (By the court.) You mean a double lantern?

A. Yes, sir; forward and aft; a green light on our starboard wheel-house, and a red light on our port wheel-house.

Q. (By Mr. McMahon.) The usual lights of a vessel of your kind?

A. Yes, sir; what passenger boats carry.

Q. Before the collision, were your lights lit?

A. Yes, sir.

Q. State how you know that.

A. After I came on the watch I rang the deck bell and asked the look-out man if our lights were all burning. The side lights and the aft lights I can see from the pilot-house by looking out of the windows; but the head lights I cannot. He went forward and reported to me

66 that the lights were burning good.

Q. Who was your look-out?

A. His name is James McCallum or McCallug.

Q. Was that his business?

A. Yes, sir.

Q. Was he a careful man?

A. Yes, sir; a very good man.

Q. How long was he on duty before the collision?

A. He is on all duty all night.

Q. When you rang for him, how long before the collision was it?

A. Probably it might have been three minutes or more; after we got above Catskill Point he reported the lights.

Q. Who was with you in the pilot-house at and just before the collision?

A. Mr. Witherwax, the other pilot.

Q. He was your assistant?

A. Yes, sir.

Q. Is he a first-class pilot?

A. Yes, sir; he has got his license as such.

Q. Is he a capable man?

A. Yes, sir.

Q. Who had you in the engine-room that night?

67 A. Mr. James Brozier was on the watch—the 2d engineer.

Q. He was on duty?

A. Yes, sir.

Q. There is one point I want to make a little clearer. You stated that at the time you saw the Syracuse alter her course, you thought that you could get by her, and therefore didn't slow & stop; what would have been the result if you had slowed and stopped?

A. I think she would have sunk us. I have no doubt in my mind but the pilot on the Syracuse done all he could to break her sheer, and by letting my boat go on, not slowing her, I was in hopes I could outrun him or get by him, so that he would not hit us, and that if he did, he would hit us as well aft.

Q. How many passengers were on board that night?

A. Her usual lot; I don't know the number.

Q. A heavy lot of passengers and freight, I suppose?

A. Yes, sir.

68 Q. Do I understand you to mean that this sheer was so sudden that if you had slowed and stopped, you would have been sunk?

A. Yes, sir.

Q. And you thought it better judgment to go on?

A. Yes, sir.

Q. You said that you had no doubt the pilot of the Syracuse did all he could to break that sheer. Explain what you mean by that remark. What vessel did the Syracuse have on her larboard hand?

A. She had a heavy-loaded ice-boat on her larboard side, and she had one of the Albany barges on her starboard side.

Q. (By the court.) Right along amidships?

A. Lashed to her side, with a barge on each side. The barge on the port side was an ice-barge loaded deep; much deeper than the one on the other side, and drew probably nine or ten feet of water.

Q. The barge on the port side?

A. Yes, sir; the in-boat was the one that hit us.

69 Q. The barge on the port side drew, you think, 9 or 10 feet of water?

A. Yes, sir.

Q. How much did the one on the other side draw?

A. The barge on the other side I don't know how deep she was loaded; but I don't think, from what I saw of her, that she was loaded deep; I think she had a usual load on, not loaded deep.

Q. Would draw about how much?

A. Probably six feet or six and a half feet; I won't be certain as to how deep the barge was; from what I seen of her I should not think she had a full load on.

Q. What effect would that have upon the steerage of the Syracuse?

A. I have been connected with tow-boats in my time; and where we get two boats in tow that way—one much heavier than the other—the heavier one will have a tendency to haul the steamboat off towards her.

70 Q. The heavy barge on the port side would, in case of a sheer, have a tendency to haul the head of the tow on to you?

A. Yes, sir; it would have a tendency to run the steamboat off towards us.

Q. Operating as what?

A. It would have a tendency, if they had stopped and backed the steamboat, to steer her the other way, the heft of the ice-barge being so much more than the other one; if she had backed her engine it would have had the tendency to sheer her off towards the west land.

Q. If they had slowed & backed the boat?

A. Yes, sir; if they had backed the boat with a heavy barge on her port side, it would have a tendency to shove her head off to the westward when she went back.

Q. But not backing her, it would have a tendency to send it off to the eastward?

A. Yes, sir; I don't think they backed her engine; I didn't see her engine back.

71 Q. How near had you got to the east flat at the time she got into you?

A. I don't think we could have been off from the east flat not over 250 or 300 feet.

Q. How wide is your boat?

A. We are about 60 feet, I guess, over all, from outside to outside.

Q. How wide is the Syracuse?

A. I don't know her breadth of beam; I don't know what her breadth of beam is; I should judge she is as wide as the Rip Van Winkle, or wider.

Q. At the time you passed the Joe Johnson, how far was she off the west flat?

A. I considered her pretty well close to the flat; well over to the westward.

Q. At the time you blew your whistle could you have gone to the westward of the Johnson?

A. I don't think we could; we could not have gone up to the westward and got around her into the channel again.

Q. Could you have gone to the east of the Arnold?

72 A. No, sir; there was not room for us. The Arnold was as far to the eastward as she could comfortably get, and there was not room eneough for us inside of her.

Q. That is between her and the east bank?

A. Yes, sir.

Q. That map that is shown to the judge, does that state the measurement of the channel there correctly?

A. Yes, sir.

Q. How do you know that?

A. I went with the engineer, and helped him to take the measurement, who made the map—Mr. Fuller, city surveyor.

Q. Is that map made from an actual survey of the ground?

A. Yes, sir.

Q. When?

A. I think it was on the 8th of Jan'y—of this month.

Q. State the usual course of passengers vessels in going up the Hudson River when they get near Brandron's Hollow.

73 A. We follow the west land along up till we git to Brandron's Hollow, and then we steer from there east to the westward of the lights in the foundry, to Hudson, which takes us up through the middle of the channel.

Q. You went inside the Hudson lights?

A. I steered inside of the Hudson lights.

Q. (By Mr. Benedict.) To the east or west?

A. To the east; I headed to the east of the Hudson lights, from the time that I crossed from the hollow over in the reach.

Q. About opposite what spot did the collision take place?

A. I should think it was very near the buoy; I don't think we had got up abreast of the buoy, but not much odds of there.

Q. Very near opposite the buoy, you say?

A. Yes, sir.

Q. The buoy is on the west side?

A. The buoy is on the west side.

Q. And your collision took place on the east side?

A. Yes, sir.

74 Q. At the time the Syracuse and the tow run into you, I want to know whether she glanced off in any other direction.

A. Yes, sir; after she hit us it shoved her off, headed towards the west land, and knocked us off further to the eastward, so that we were across the Arnold's track, on the course she was heading.

Q. Do you know where she fetched up when she glanced off?

A. The Syracuse?

Q. Yes, sir.

A. I don't think she did after we fetched up.

Q. I ask you where she fetched up after she glanced off?

A. She went off in the direction towards the Joe Johnson.

Q. Hong long have you been a pilot?

A. I have been a pilot about twenty years, on the Hudson River.

Q. What class of vessels?

75 A. I have been in all classes; I have steamboated since I was pilot. I have been in tow-boats and in passenger boats. I never went but one year on a tow-boat that ran through to New York, and I was one season in the steamer Mercury, and the rest of the time I have been in passenger boats and the Troy line; I was there 16 or 17 years.

Q. 16 or 17 years in the N. Y. & Troy line of passenger boats?

A. Yes, sir; and the rest part of my time I have been in little tugs. I have owned two of my own, and have been employed in the tow-boat business.

Cross-ex'd by Mr. Benedict:

Q. You went on the wheel down at the 9-mile tree?

A. Yes, sir.

Q. Whereabouts in the river was your boat; was she on the east or west shore?

A. She was on the usual track.

76 Q. What is that?

A. When there is nothing in the way we generally run pretty near the middle of the river.

Q. And she was in the middle of the river?

A. Yes, sir; in the middle of the river.

Q. Did you make any stoppages in going up the river?

A. No, sir.

Q. When you got up to Catskill, how near did you come to the Catskill landing-place?

A. We kept the usual course right along up.

Q. Is that the middle, the usual course?

A. When we go by Catskill, as a general thing, and nothing in the way, we go along about 200 feet off from the dock.

Q. From Catskill dock?

A. Yes, sir.

Q. That brings you on the west side of the river?

A. Yes, sir; and we follow the west side of the middle of the channel.

77 Q. Along up till you come to Brandron's Hollow?

A. Yes, sir.

Q. And then what?

A. Strike our course through the reach.

Q. Does that carry you east of the middle of the channel?

A. That takes us about up; when we come up abreast of the buoy it takes us about in the middle of the river, provided we steer to the west of the lights on the blast foundry at Hudson, and when we steer to the westward of the lights on the foundry, that fetches us well up to the eastward.

Q. How near would you go to Whistwell's Point?

A. Sometimes we go off from Whistwell's Point 300 or 400 feet.

Q. Good water there?

A. Yes, sir, right at the point; but below the point it is not; the flat carries the buoy off towards the westward.

Q. When you first saw the three steamboats that were ahead of you, that is to say, the Arnold and the Syracuse and the Joe Johnson,
78 when you first saw them you were about in the middle of the channel?

A. No, sir; I was following the west land along up on our usual course.

Q. Just above Catskill?

A. Yes, sir; while we were about abreast of Roger's Island. When you are at Catskill Point, you cannot see up through the reach as plain as you can a little further up.

Q. You got to Roger's Island, which is about 4½ miles below Hudson, is it not?

A. Yes, sir.

Q. Then you looked up, and saw these three boats?

A. I saw the tows coming down.

Q. I want you to place yourself on the pilot-house, as you were on that night, and tell me whereabouts was the Arnold; was she on your port bow or on your starboard bow?

A. She was on my starboard bow, and to the eastward of the
79 middle of the channel considerably, when I first saw her.

Q. Did you know that she was bound up when you saw her then?

A. I could tell by her lights. I could not see any head lights or stern lights, but I could see the lights on her hawser tier, and the lights shining out from the propeller.

Q. You knew she was going up?

A. Yes, sir; I supposed she was going up.

Q. When did you see the Joe Johnson?

A. I saw the Joe Johnson lower down.

Q. Where was she?

A. To the westward.

Q. She was on your port bow?

A. Yes, sir.

Q. Pretty near the edge of the channel?

A. She was below the buoy some way; she was not down the lower point of the flat; she was not along the main land, but was tracking down along the edge of the flat.

80 Q. The Joe Johnson was then below the buoy when you first saw her?

A. Yes, sir; I should think she was.

Q. Where away was the Syracuse?

A. She was astern of the Johnson and to the windward of her.

Q. Where did you see her, over your bow?

A. No, not there.

Q. You saw the Arnold on your starboard side?

A. Yes, sir.

Q. The Joe Johnson over your larboard bow, and both of them pretty well into the shore, each on its own side?

A. Yes, sir.

Q. On what bow was the Syracuse?

A. She was on my port bow.

Q. How much did you open between her and the Joe Johnson?

A. She was tracking right along down after the Johnson, and a little to the windward of her.

Q. Which way was the wind?

A. The wind was southeast.

81 Q. Then she was a little to the east of her?

A. She was to the westward of me, and to the eastward of the Joe Johnson, ~~just in range of her hawser tier~~. If you want to get the bearings from the pilot-house, I will give them to you. When we were below Catskill, or above Catskill—when we first made these boats—we were to the west of these steamboats; we were heading to the westward of them.

Q. To all of them?

A. No, sir; of these two.

Q. What two.

A. The two bound down, and one bound up. We were heading to the west of them, followed the west land right along up in the usual course, and when it came to a turn in the channel in the hollow, then we bore to the eastward; that fetched those two boats bound down on our port bow, and the one bound up on the starboard hand on our starboard bow.

82 Q. I want to know what was the situation of these boats when you first saw them.

A. The situation, when I first saw them, was as I have explained it to you.

Q. The Arnold on your starboard bow, and the other two on your port bow?

A. Yes, sir.

Q. The Arnold pretty well in to the east shore?

A. The Arnold was to the east of the middle of the channel.

Q. The Syracuse was coming down pretty nearly along behind the Joe Johnson.

A. Yes, sir; but off to the windward of her.

Q. A little to the eastward of the Joe Johnson?

A. Yes, sir.

Q. Then, when you first saw them, as I understand, your course was to the westward of all of them?

A. Yes, sir; that was the course of the channel when I first saw them.

Q. I mean the way you were heading.

83 A. I mean the way I was heading. The way I head is my course.

Q. That was to the west of all of them?

A. Yes, sir; that was to the westward of all of them.

Q. Then, when you first saw them, you are mistaken when you say that one was on your larboard bow, and the other two on your starboard bow?

A. When I first saw them I was heading to the westward of the whole of them.

Q. I understand you to say that when you first saw them, the Arnold was on your starboard bow, to the east of the middle of the channel, and the Joe Johnson was on the larboard bow, clear along by the edge of the channel, and the Syracuse was coming down along behind her, a little to the east of her. Now you can straighten that, if you want to make it different.

A. I came up in the usual channel in my usual course, and when
84 I first saw the Syracuse and the Joe Johnson, we were heading
to the west of them, and the Arnold being off to the east of the middle of the channel, she was on our starboard bow; that was what I told you, and these boats, as we tracked along up the west land, until time to alter our course in the reach to stand across, were to the eastward of us, and we were heading to the westward of them when we altered our course and steered for Merino Point, it kept them still to the westward of us. When we first went up along the channel we headded in to the westward of the lights of the two boats; when I altered my course to go across the reach, that still kept them to the westward.

Q. Then they were to the west, and before that you were heading to the west?

A. Yes, sir; and I kept to the westward all along up.

Q. But bye and bye you sheered to go over to the eastward?

A. Yes, sir.

Q. And that left them on your port bow?

A. Left them on my port bow.

85 Q. Where did they first come on to your port bow?

A. When I sheered off from the hollow to go across the reach for Merino Point.

Q. Then the first place where you saw them on your port bow was about at the hollow?

A. No, sir; I saw them when I was away below.

Q. The first place you saw them on your port bow?

A. They didn't come on our port bow until we altered our course to stand across, and that was at the hollow, or above the hollow they were.

Q. You were at the hollow, were you not?

A. Yes, sir; we were at the hollow, and past the hollow, and there was where we headed across.

Q. If I understand it, you went up heading to the west of all these boats till you got about the hollow, and then you ported your helm and steered across, heading to the lights.

A. Yes, sir.

Q. And that brought the Arnold on your starboard bow, as she
86 had always been, but the others had got on your port bow by your
altering your course?

A. Of course, it kept the other boats on our port bow, on the west side of the river.

Q. They had not changed their course, but you had changed yours?

A. We had to change our course in order to run the channel.

Q. When you got to the hollow, you saw those boats, all of them, on the starbord hand, but then you sheered to make the course of the light at Hudson, and that brought the Syracuse and the Joe Johnson on your larboard hand?

A. Yes, sir.

Q. Then you headed up straight from that time till about the time of the collision?

A. No, sir; when I altered my course I saw those boats coming down, and I supposed they were big tows bound from Albany. I seen the Joe Johnson's lights on her hawser tier, and saw the lights on all the boats. When I blowed my whistle at the hollow, I went well over to the eastward to give the vessels room bound down, and went as close to the Arnold a I thought safe.

87 Q. At the hollow you blew your whistle and ported your wheel?

A. Yes, sir.

Q. How far is the hollow below Hudson?

A. It is just about half-way between Catskill and Hudson.

Q. That is about 2 miles and a half or 2 miles and three quarters?

A. It is about 2½ miles.

Q. How far distant from you do you think the Joe Johnson was at the time you blew your whistle?

A. I should think she was about three quarters of a mile, probably not over half a mile.

Q. And the Syracuse?

A. She was astern.

Q. Not much astern?

A. When I blew my whistle, then the Syracuse was astern of the Joe Johnson, probably twice or three times her lenth.

Q. They were both of them half or three quarters of a mile off from you?

A. When I first blew my whistle.

Q. What is the speed of your boat?

A. I suppose with fair wind——

Q. (By the court.) What was your speed then?

88 A. With a flood tide and fair wind I think she would go along about 16 or 17 miles an hour.

Q. Did you take a pretty rank sheer to get out into the reach?

A. Yes, sir; I gave her a good rank sheer over in order to approach the east land in due time, in order to clear the vessels coming towards me.

Q. Did you straighter up again at all, or did you keep that sheer?

A. After we altered our course, when we came to the tack that we usually follow, I then steadied my boat, evrything was all clear.

Q. Did you keep your eye on these boats all this time?

A. I did.

Q. Do you recollect on passing of your opening them?

A. Yes, sir.

Q. How far?

A. When I first altered my course and opened them it showed them off, I should think, probably 300 feet or more.

Q. 300 feet or more to the westward of you?

A. Yes, sir.

Q. What is the course of the river there?

A. East by north.

89 Q. After you steadied your wheel you kept straight on till you saw the Syracuse make a sheer?

A. Yes, sir; I kept my course till I saw the Syracuse make a sheer and come towards me.

Q. How far off from you was she then when she made that sheer?

A. I should think she was off from us, probably theree times her length.

Q. How long was that?

A. I don't know how long she is; it might have been as far as that and it might have been twice her lenght off.

Q. Give it to us in feet.

A. I should think probably she was off 300 feet, or somewhere along there, when I saw her make a sheer.

Q. You sheered immediately?

A. The minute I noticed her sheer by her lights I then hove our wheel aport.

Q. Hard port?

A. I didn't get it away over before she hit us; I got it over as far as I could; I don't think I got our wheel hard over before she came into us.

Q. Did you make any sheer?

90 A. Yes, sir; we sheered.

Q. Was the sheer not pretty rank?

A. Yes, sir.

Q. Did you get a little run on your sheer?

A. No, sir; the sheer was a little steady at the time, just got her nicely coming.

Q. I mean on the sheer coming into you?

A. Yes, sir.

Q. How were you running the east land at that time; you had got over toward the eastward at that time, had you not?

A. Yes, sir; I think we were to the eastward of the middle of the channel at that time.

Q. Were you running pretty nearly parallel with the land, or was you heading into the land?

A. When we altered our wheel we were heading pretty broad in on the flat.

Q. That is the flat below Merino Point?

A. Yes, sir.

Q. But before you altered your wheel how were you heading?

A. We were heading then about for the lights at Hudson—just about for the lights.

Q. Whereabouts is that buoy; is it about opposite Merino Point?

A. No, sir; it is below, nearly a mile; it is just a mile from the
91 hollow to the buoy, and it is about a mile from the buoy to
Merino Point; the hollow is a little to the north of half the distance.

Q. You call it about half a mile from Merino Point up to Hudson?

A. It is not as far as that; Merino Point is right abreast of what is called Hudson buoy.

92

93 Q. You don't call it as much as half a mile to Hudson landing?

A. Yes, sir; I should think it was to Hudson landing.

Q. Did you ever land there with a steamboat?

A. Yes, sir.

Q. The steamboat channel to land at Hudson is between Hudson and the middle ground?

A. Yes, sir; Hudson channel is between Hudson and the middle ground.

Q. All the boats that land at Hudson go in that way inside?

A. Yes, sir.

Q. They keep up on that side—they don't go across where the ferry-boats run, but go right straight up?

A. If they want to go into Hudson they have to go into the north of the middle ground.

Q. Why did you port your wheel—throw your wheel over to port as you did when you saw the Syracuse sheer?

A. I meant to keep clear of her—to outrun her; I was on my starboard hand, and I sheered to keep my starboard hand, and I was in hopes I could outrun her before she came into us.

Q. How far below the buoy did this collision take place?

A. I could not say whether it was right below the buoy or nearly
opposite, but my judgment is it was right below the buoy—just
94 a little below the buoy—below opposite the buoy on the east
side.

Q. I understood you to say a few minutes ago that when you first saw the Joe Johnson she was below the buoy?

A. I should judge she was, but then she had a heavy tow, and the wind to the southward, and a flood tide, and they would not be apt to tow them along very fast, and the Syracuse was astern of her.

Q. Did you pass the Joe Johnson?

A. Yes, sir; we did.

Q. How near?

A. I should think when I went off that I went to the windward of the Joe Johnson, probably 350 feet; I should think I did full that; it might have been more.

Q. You think the Syracuse was about on the line of the Joe Johnson, except she was a little to the east of her?

A. She was to the windward of the Joe Johnson tracking right down in the same course.

Q. If she went on, would you have left her to your port side?

A. If the Syracuse had kept on and came right down inside the Joe
Johnson's hawser tier a little, we would have cleared her, on the least
350 calculation, 300 feet or more.

95 Q. Are you quite confident of that?

A. Yes, sir.

Q. When you made your sheer, you say she was then about 350 feet above you in the river?

A. She was to the northward of us.

Q. As much as that?

A. I should say she was when I first saw her make he sheer; I should judge she was in the neighborhood of 300 feet, somewhere along about there; I could not be certain as to the distance.

Q. How near should you say she was to the flat, or the west shore?

A. From where she collided, I think, I was probably not more than one hundred feet or 150 feet from the flat.

Q. From the western flat?

A. From the eastern flat; that is, where we were when we collided. I should think the Syracuse was off the flat when she came into us in the neighborhood of 600 feet, or more.

Q. 600 feet from the west flat?

A. Yes, sir.

Q. Just about the buoy?

A. Just about there.

Q. You said something about the effect of these barges on the Syracuse. The Syracuse is a pretty large craft?

A. Yes, sir; she is a large tow-boat.

96 Q. And she simply had these two barges, one loaded with ice
pretty deep, and the other one, how was it loaded?

A. I don't know what she was loaded with.

Q. Was that not loaded pretty deep?

A. She had her usual load on but not loaded deep. I judged from what I seen of the barge. I did'nt see along side of her; I only saw her bows.

Q. That is, you thought she had a usual load on; seemed to be deep in the water?

A. I didn't consider deep.

Q. Did you think she was emty?

A. No, sir; I should think she was about two-thirds loaded, and she might not have been over one-third loaded.

Q. You only judge from appearances?

A. That is all; that is all the opportunity I have got of knowing it; but the ice-barge I know was loaded deep, for I seen her along side.

Q. You think that running along on an even helm, the tendency of that ice-barge would be to throw her bows which way?

A. To port; it would have a tendency to sheer her to the eastward.

Q. And as soon as they should stop her, what then?

A. If they should stop her, it would have a tendency to sheer her the other way if they backed her.

97 Q. But if they did'nt back her?

A. Then it would have a tendency to throw her bows to the westward; for when you stop the steamboat, the barge would hold her way for a time.

Q. There is no difficulty in steering a boat, with a barge on one side that is heavy, and one on the other side that is not so heavy?

A. No, sir; only it takes a little more wheel to steer her. As a general thing, when you have a heavy barge on one side and a light one on he other, a steamer will carry a turn of her wheel; that is, the rudder-chain on the bearings.

Q. When you passed the Joe Johnson, how far do you think she was from the bank of the west flats?

A. I could not tell so accurate, because we were off to the westward of her, but I should think the Joe Johnson was off probably from the flats probably 100 to 150 feet, may be not over 100 feet, but I cannot say for it might have been more and it might have been less.

Q. Had you any others in the pilot-house with you?

A. Yes, sir; Mr. Witherwax was at the wheel.

Q. Any one else?

A. No, sir.

Q. Who else was about the deck there?

98 A. The night watch—the look-out man. He reported the lights to me after I came on the watch above Catskill. Then he went out of the pilot-house.

Q. He come in and reported to you?

A. Came into the pilot-house and reported to me.

Q. That was down aboit the nine-mile tree?

A. No, sir; this was above Catskill.

Q. Was any one else about?

A. No one but Mr. Witherwax.

Q. What was the other man's name?

A. Mr. McCallum or McCallog.

Q. Whereabouts is your pilot-house?

A. The pilot-house stands forward on the hurricane deck.

Q. How far from the bow?

A. I should think it was 50 feet from the bow.

Q. From the stem?

A. Yes, sir.

Q. Where was Mr. McCallum?

A. He came to the pilot-house and reported the lights.

Q. Did you see him before he reported the lights at all?

A. Yes, sir; I rang the deck bell and he came up to me, and I asked him how the lights were, and he started right off and went and looked

at the lights and came up in the pilot-house and told me they
99 were all right, that they were burning.

Q. Did you see him before you rang the bell for him?

A. No, sir; for sometimes he stays right in front of the break of the saloon; sometimes he is in one place and sometimes in another.

Q. The fo'ward deck runs rather over?

A. Yes, sir; a little deck projects out forward of the pilot-house.

Q. Did you see him after he reported the lights?

A. He went out of the pilot-house then.

Q. Did you see him after that, before the collision?

A. No, sir.

Q. Where is he now?

A. I have not seen him since we laid the Rip up, last fall; we laid her up the first of December, and I went home, and I have not seen him since; he does not live in Troy or in Albany.

Q. Where did the Syracuse strike you?

A. She struck us aft of the forward gangway and forward of the paddle-box; right in our gaurds—she struck us right on the gaurds, just forward of the wheel.

Q. And the effect of that was to carry away part of your gaurds, timbers, and upper works—top, hamper, and all?

100 A. It didn't take off our upper deck; it broke the gaurds in and broke off the deck-beams, and took off the side-house, and a portion of the water-wheel, and extended along till it got right down to the front of the boiler, and took the coal out of the fire-room.

Q. Did it break in the deck timbers at all?

A. Took the deck-beams all off close up to the hull.

Q. The deck-beams are inside the hull; you mean the gaurd-beams?

A. I mean the gaurd-beams.

Q. Came pretty near up to the hull, and carried away part of your water-wheel?

A. Yes, sir.

Q. Did it throw the shaft out of place?

A. Yes, sir; it took the pillar-block out that holds the shaft up, and the fore-and-aft timbers that holds the shaft up; that all went overboard, and the shaft dropped down.

Q. A pretty considerable blow, then?

A. Yes, sir.

Re-direct:

Q. How far off was the Syracuse from you at the time she answered your whistle?

A. I should think she was about half a mile; it might have been less than that; but I should judge it was about half a mile.

101 Q. And at the time she answered your whistle, off of which of your bows did she bear?

A. She bore off on the larboard bow. When I got to the hollow, I followed up in the usual course and headed across and blew my whistle, and both boats answered it, the Joe Johnson and the Syracuse.

Q. (By the court.) This was after you ported your helm?

A. Yes, sir, after we headed across; we whistled when we were at the hollow; and when about the hollow I blew my whistle, and both boats answered it.

Q. Did you head across before they answered your whistle or after?

A. It was about the time we headed across that I blew my whistle, and they answered it. We generally wait until we get within a respectable distance of a boat before we blow our whistle.

Q. How far did she bear off your larboard bow when she answered your whistle?

A. She was off a considerable of a way; she was then tracking down in the same course as the Johnson, but off to the windward of her.

Q. You use an expression here about altering your course; what do you mean by that?

That in sheering either one way or the other—by altering your
102 course is to sheer either one way or the other from a straight line
that you might be following any time when you altered your
course.

Q. Do I understand you to mean that you altered your course out of the usual track?

A. Yes, sir; I went to the eastward of the middle of the river when I sheered across.

Q. That was when you saw the vessel?

A. Yes, sir; I sheered across the reach to take my course through there.

Q. That was the usual course?

A. Yes, sir.

Q. Do I understand you to mean that you went to the east of your usual course before you saw she was coming into you or before you saw that she was sheering on to you?

A. No, sir; I was going the usual course from the hollow to the lights.

Q. At the time she took the sheer?

A. Yes, sir; I think I was to the eastward of the middle of the channel; I am certain that I was.

Q. And then it was when you saw her take the sheer that you yourself sheered over more to the eastward?

A. Yes, sir; that was the time that I hove my wheel to port, to go
still further to the eastward.

103 Q. And at that time when you were going your usual course,
and at the time she took the sheer, suppose she had not taken
the sheer, how far would she have gone to the leeward of you?

A. I think she would have gone off 300 feet to the leeward of us, at the least calculation.

Q. Is that track of passenger boats understood on these tug-boats?

A. Oh, yes; all pilots understand the track.

Q. When you saw her sheer on to you, could you have altered your course so as to go to the west of her?

A. I could not have got to the westward of her.

By the court:

Q. Did you, in point of fact, have hold of the wheel, or did the other pilot have hold of it?

A. No, sir; I was in charge of the vessel.

Q. You didn't have hold of the wheel?

A. Yes, sir, and he had hold of it with me; we have got on our boat a single-rimmed wheel, and only two men can be at the wheel at once.

104

105 William A. Witherwax, sworn on behalf of the libellants:

Examined by Mr. McMahon:

Q. You were on board of the Rip Van Winkle at the time of this collision, were you not?

A. Yes, sir.

Q. What was your occupation on board of that vessel?

A. Pilot.

Q. How long have you been a pilot on the North River?

A. I don't know exactly; it is 15 or 16 years—16, I think.

Q. What kind of a pilot—what class?

A. 1st & 2nd class.

Q. On this boat, what were you?

A. First-class.

Q. On the night of the collision, just before the collision, where were you?

A. In the pilot-house.

Q. Where were you at the time the Syracuse ran into you?

A. I was standing at the wheel along side of Mr. Teason.

Q. Assisting the pilot?

A. Yes, sir; I was helping at the time.

Q. Give an account of the circumstances of the collision as you saw them.

A. When I called the captain, we were between the nine-mile tree
and Livingston Creek. When he got the wheel, I think he was
106 very near Livingston Creek.

Q. That is how far below Catskill?

A. I don't know exactly; it is in the neighborhood of two miles. I don't know the distance myself. It is all guess-work, unless you measure it.

Q. How many miles below Hudson?

A. That I could not tell you. I don't want to guess at anything like that, for it is all guess-work, unless you measure it. It is a little below Catskill. After he took hold of the wheel, I lit my pipe, and sat down to smoke. When the wheelsman came up, we were somewhere near Catskill—a little below Catskill.

Q. That is the assistant to Captain Teason, the wheelsman?

A. Yes, sir; and he asked him if he had had any tea. We generally have a pitcher of tea, and he said no; and he went down to get a pitcher of tea. I guess he was down below till after the Syracuse came into us. I guess he didn't get up to the wheel, back again, till the Syracuse got into us, but I stayed there at the wheel myself in his place; we always have
two there; after we had got up, so that we could open that reach
107 above, before we headed for Hudson; after we could see through
the reach, we seen the river full of lights; it looked to be all lights away across the river. Then Captain Teason spoke and said, There are lights enough up there, or made some remark of that kind. I don't exactly remember what it was. As we got up far enough to head across for the Hudson lights in their regular course, then we seen this propeller; after we got straightened up going up in that reach, and then I got along side of him.

Q. You saw that propeller?

A. I could not say what propeller it was. I suppose it must have been the propeller you mentioned, the Arnold.

Q. The one to the eastward of you?

A. Yes, sir; to the eastward of us. I looked and I said, "That fellow is pretty well to the eastward," and then Captain Teason said, "Yes, we cannot go to the eastward of him." We kept up pretty close to him and his stern tow, with the wind blowing right off there, his stern tow swung off from him pretty well. We doubled around his tows as close as we could—his stern tow, and then as soon as we got around

108 his stern tow we headed to the eastward, as soon as we could. Then the Johnson and the Syracuse were coming along; I think the Johnson was ahead of her, but I noticed from the side of the wheel where I stood; I stood on the starboard side, and Mr. Teason stood on the port side, and I should judge there was plenty of room for us and the Johnson and the Syracuse to pass at the way she was heading that time, and we were heading to the eastward of our course considerably. I spoke to the captain and I said, "That tow is coming pretty close to us. Did he answer our whistle?" Says he, "Yes, he has answered our whistle," and I said, He don't appear to alter his course. He kept that course as near as he could. I don't know how far we were away when we both hove over again, but it was not a great while before we came together. We were headed on to the eastward of our course, but it looked to me as through the Syracuse had not altered her course much, if any. Then we came together. That is about the last of it.

109 Q. When did you get up and take the wheel? I mean before or after, or at the time of this remark of the captain that there were plenty of lights ahead?

A. I think it was close to the Arnold, but I staid up on the side of the wheel sometime before in looking ahead. As soon as he spoke about the lights I got up and staid by the wheel, but I didn't have hold of it till after we got pretty well up.

Q. You staid close by the wheel?

A. Yes, sir.

Q. You got up from where you were sitting at the time he made that remark?

A. Yes, sir.

Q. Was that before you had blown the whistle, or after?

A. Before I took hold of the wheel.

Q. When?

A. I won't be certain about that. I was standing up when he blew the whistle. I won't be certain whether I had hold of the wheel before that or not.

Q. Did the Syracuse answer the whistle?

A. I think she did; I won't be certain about that. I asked the captain about it, and I think I heard two boats blow the whistle.

Q. When was it that the Syracuse took her sheer towards you?

110 A. I did not notice her alter her course at all, because it was a very short time from the time she got from behind that other tow till we came together.

Q. How far had you gone beyond the Arnold at the time she came into you?

A. I could not say for certain about that. I didn't notice that particularly.

Q. Had you passed the Arnold?

A. We got past her hawser tier, and I think she was out of sight of us. I cannot tell how far we were ahead of her, for I did not notice that particularly.

Q. She was not on your right hand?

A. I stood on the right hand.

Q. Then you had passed her?

A. I think we had passed her.

Q. How much width of channel was there at that time between you and the course of the Arnold for the Syracuse to go down?

A. I should think in my judgement there was plenty of room. I

won't say anything about it, for that is all guess-work; the way we measure distances a man would see a space and think there was room enough, but to measure the distance whether it is 200 or 300
111 feet, I would not say anything about it.

Q. You would think there was room enough?

A. I think there was room enough, to the best of my judgement.

Q. On which side of you?

A. To the westward of us.

Q. When you passed by the Arnold, how near were you to the E. bank of the channel?

A. I could not say exactly about that. She was so far to the eastward, that the captain didn't think it was prudent to go to the eastward of her. Her tow was swinging off, with the wind blowing southeast, and I supposed she was a light boat, and would swing her tow off some, and would throw us off a little further going around them; but then we headed right to the east when we headed around them.

Q. She was so close into the bank that you could not go to the eastward of her?

A. That was Capt. Teason's judgement, and I spoke about it, too. I didn't take as particular notice as if I had charge of the wheel myself.

Q. Is there anything in the arrangement of the lights of the Syracuse that could tell whether she had altered her course or not?

112 A. I don't know how it was that night. I beleive her smoke-pipe was broken off that night; she had only half a smoke-pipe; but when she had her regular pipe she was a very bad boat at the time, anywhere you might fetch her, for you would have to be a good way off one side of her before you could see her stern lights. Her stern lights were always lit.

Q. You didn't see whether her smoke-stack was knocked off that night?

A. I know it was. I think it was that week; I won't be positive, but I think it was that week.

Q. Didn't you observe the Syracuse alter her course?

A. No, sir; I did not.

Q. Did you make any remarks to Capt. Teason about her altering her course?

A. No, sir; I spoke to him in this way: Says I, "Captain Frank, we are coming close to that tow." I didn't know it was the Syracuse. Said I, "We are coming close to that tow. Did she answer your whistle?" Said he, "Yes." "Well," said I, "he hangs on," or made some such remark as that. "He don't appear to alter his course; we will come pretty close to him."

113 Q. Did you see her lights hid in any way?

A. I only noticed her bow lights and her red light. I didn't take particular notice of her stern light; but then I could see the shape of the boat; we were getting pretty close to her.

Q. Didn't you make a remark to the captain that the vessel had altered her course because her lights were hid?

A. I don't know that I did make that remark; no, sir.

Q. Or anything to that purpose?

A. No, sir; not that I know of.

Q. (By the court.) What lights did you say you noticed?

Her bow light and her red light.

Q. Where is this red light?

A. In different places; sometimes forward, and sometimes over the pilot-house.

Q. (By Mr. McMahon.) You were examined before you came into court by me, were you not?

A. Yes, sir.

Q. You signed a deposition, did you not, or a statement?

A. Yes, sir.

Q. (Handing paper to witness.) Is that your signature?

A. Yes, sir.

(Paper marked Exhibit B by the court for indentification.)

114 Cross examined by Mr. Benedict:

Q. Where were you when you first seen these tows? Whereabouts was your boat when you first saw them?

A. We had just come so that we could open that reach up there.

Q. About the hollow?

A. We were away below the hollow when we first saw them.

Q. About Roger's Island?

A. A little above that when we opened the reach.

Q. When you first saw them, on which side was she? Whereabouts did you see her?

A. When we were there the lights looked to be all alone together; but the further we went up——

Q. When you first saw them, were all their lights on your starboard hand?

A. They were all on our starboard hand.

Q. When you got a little further up, and got up to the hollow, along up there, some of them came on to your port hand?

A. After we got far enough up to straighten up in that reach.

Q. Was the Arnold then still on your starboard hand?

A. She was a little on our starboard hand, and the others were pretty well ahead of us, the way it looked then. 115

Q. Were they on either side?

A. They were a little to our port side.

Q. How far off was that, do you think, from you?

A. I could not tell exactly how far off. It is all guess-work about these distances.

Q. You were then between the hollow and Merino Point somewhere?

A. Yes, sir.

Q. Will you tell me how you can tell where the channel ends and where it begins in the night-time?

A. We have got to tell that, or we cannot run. We tell by certain landmarks we have.

Q. Which tells you where the channel is always; or does it tell you where to run, and that will keep you in the channel?

A. Yes, sir.

Q. With such a sky as you had that night, can you tell when you look off forward, and to the starboard, and to the larboard, where is the line between the channel and the flats?

A. Yes, sir.

Q. How can you tell it?

A. If you come up through that reach, you have got your guide to go by.

Q. You go by these guides?

116 A. Yes, sir.

Q. There is nothing to mark the difference on the water, is there?

A. Not in particular. You could not see it in the night.

Q. But you go by your regular sailing marks, don't you—your sailing objects, whatever they are?

A. Yes, sir.

Q. When you opened those two boats on your port bow, did they seem to be together or apart, so that you could see plainly that there were two tows?

A. We could tell by the lights there was more than one tow, because if there is only one tow, it would only show one bright light and one red light; and when you see two bright lights and two red lights away from you, you would suppose it was two tows.

Q. Could you see between the two tows?

A. After we got past this propeller, before we came up along, his port ligths looked pretty close; but when we came around the point, and headed towards the east flats, we could see the clearings between the tows. Often you approach a tow away off, and you think there is no room to pass; and when you get pretty close, you see there is plenty of room.

117 Q. When the pilot ported his wheel over to the eastward, just before the collision, a few seconds more or less, was anything said between you and him on the subject?

A. Yes, sir.

Q. What was said?

A. I spoke to him, and says I, "Frank, we are coming pretty close to that tow. Has he answered your whistle?" Said he, "Yes." I said he don't appear to alter his course. We were heading, then, to the eastward of our course.

Q. Did he say anything else?

A. I believe he said to me, "Heave over." I think I had hold of the wheel with him.

Q. Heave over which way?

A. Heave over aport, and I think—I know—we both hove over then, and headed her more to the eastward still.

Q. Did you make any suggestions to him as to slowing or stopping, or anything of that kind?

A. No, sir.

Q. Nor he to you?

A. No, sir.

Q. Nothing said about that?

A. I will take that back. After the collision, she stopped—her engine stopped.

Q. Which vessel?

118 A. The Rip Van Winkle; and said I, Captain Frank have you stopped her? Said he "No; if I had stopped her she would have sunk us." But the engineer, I believe, stopped her, or her engine stopped after she struck.

Q. That was after the collision?

A. Yes, sir.

Q. You say there was nothing before the collision on that subject between you and him?

A. No, sir; not that I recollect. That is exactly as it was.

Q. Did you say anything, or did Mr. Teason say anything, about going to the westward or the eastward of that boat?

A. No, sir.

Q. You didn't suggest it was time to go to the westward or eastward of that boat?

A. No, sir.

Q. You did not suggest it was best to go to the west of them?

A. No, sir.

Q. Nor Mr. Teason didn't?

A. No, sir—any man; the pilot of a steamboat would know the course we went was the only was we could go, the way they were placed; it was the only chance we had.

Q. Did you hear what Mr. Teason said as to the way the vessels came together?

A. I don't recollect all he said.

Q. Then tell us how the two vessels came together.

119 A. She struck us right in our forward gangway; the ice-boat she had along side of her (I suppose it was an ice-boat) struck us on the larboard side in the forward gangway—somewhere near the forward gangway; it was in the forward gangway, I think; they took ev'rything clear off into the boiler, and they started the boiler aleaking.

Q. What became of the Rip Van Winkle that morning?

A. She blew over to the westward—she blew ashore, and we sent and got a ferry-boat and towed her up to the dock—sent and got a ferry-boat as soon as possible.

Re-direct:

Q. You made a remark to the counsel on the other side that no pilot could have taken any other course than the pilot of the Rip Van Winkle?

A. I would not have done so myself, and I don't think any other man would have taken any other course. I won't be sure, but I don't think any one could have gone to the westward of the other tows; and, [an] another thing, it would not have been prudent to do so, even if there had been a chance.

Q. (By the court.) You mean to the westward of the two tows?

120 A. Yes, sir.

Q. (By Mr. McMahon.) Suppose the Syracuse, at the time you blew your whistle, and at the time she answered with her whistle—suppose she had ported her helm, what is your opinion as to the collision taking place?

A. I do not think it would have happened; I am certain it would not have happened.

Q. You think there would have been plenty of room?

A. I think there was room enough between us and the Johnson for her to pass.

Q. Do I understand you to say that the Syracuse did not, after blowing her whistle, alter her course?

A. I could not say as she did.

Q. After blowing her whistle she kept straight on?

A. I could not see any difference, because I watched her in particular. I spoke to Captain Frank, and said I, That boat is coming pretty close to us.

Q. How fast was the Syracuse going?

A. I could not tell anything about it.

Q. Can you tell whether she was going with her usual speed, with such a light tow?

A. Of course she would be going, I should think, about twice as
121 fast as she would with a regular tow she generally takes—that is
if she was going on as fast as usual at the time she hit us. I could
not say how fast she was going then.

Q. She was going very fast?

A. I cannot tell how fast she was going at the time, but we came together very quick.

Re-cross:

Q. You say that with a light tow she would go about twice as fast as she would with a heavy tow, other circumstances being equal?

A. I should think she would, without a doubt. The Syracuse is a boat that generally takes a very heavy tow; she is a very powerful boat, and with two boats she would go along very fast.

Re-direct:

Q. Had she lights for a regular tow?

A. She had the regular lights she would have for a regular tow; I didn't see any difference.

(Mr. McMahon offered in evidence a statement previously made by the witness. Objected to.)

Q. How long since you were examined by me?

A. I could not tell that.

Q. (By the court.) You think it would not have been prudent for the Rip Van Winkle to have undertaken to have gone to the west of the Joe Johnson and the others?

122 A. No, sir; I don't think it would.

Q. Do you think it would have been prudent for her to have gone to the east of the Arnold?

A. No, sir.

Q. Your conclusion was that the only safe course was to go between them?

A. To go around her?

Q. To go between the Arnold and the other two?

A. Yes, sir.

Adjourned till to-morrow morning, Jan. 23rd, at 11 o'clock.

123 John Olever sworn on behalf of libellant:

Examined by Mr. McMahol:

Q. You were captain of the Joe Johnson on the night of the collision, were you not?

A. Yes, sir.

Q. How long have you followed the water?

A. Some 25 years.

Q. Been pilot of a vessel?

A. I have.

Q. (By the court.) How long on the Hudson River?

A. All the time on the Hudson River.

Q. (By Mr. McMahon.) And in all capacities?

A. I have been as pilot and as captain.

Q. On that night how much of a tow did your vessel have?

A. She had nine boats that night.

Q. Were they aside or astern?

A. All astern.

Q. Hawser tier?

A. Hawser tier.

Q. (By Mr. Benedict.) How many tiers were they?

A. Three tiers; three abreast and three in each tier.

Q. (By Mr. McMahon.) How long a hawser did you have?

A. It was 75 fathoms.

Q. Are you acquainted with the channel there?

124 A. Yes, sir.

Q. I want to call your attention to the circumstances of the collision. State what you know about it.

A. I don't know anything about the collision; I didn't see it.

Q. Where were you at the time of the collision?

A. We were a little below the routh of the Rip Van Wrinkle at that time.

Q. (By the court.) How far were you from the buoy?

A. South of the buoy.

Q. How far?

A. We might have been half a mile or three quarters.

Q. How near the west shore?

A. We were close to the west shore.

Q. How close?

A. We might have been 50 or 100 feet from the bank, I mean.

Q. You mean by the bank the edge of the channel?

A. Yes, sir.

Q. (By Mr. Mahon.) Did you observe the Rip Van Wrinkle that night?

A. I did.

Q. Where did you first see her?

125 A. I saw her down the reach, probably a mile and a half when I first saw her.

Q. How was she coming up there?

A. She was coming up the usual course; she was heading well up the west shore; heading to the westward of us.

Q. (By the court.) When you first saw her?

A. Yes, sir; all the time up to the time when she altered her course.

Q. (By Mr. McMahon.) When did she alter her course?

A. About abreast of the hollow, or a little above if anything.

Q. That is the usual way to alter a course there?

A. Yes, sir.

Q. Did you hear any whistle blown?

A. She blowed one whistle, and it was answered by the Johnson.

Q. Did you hear it answered by the Syracuse?

A. I didn't hear it, sir.

Q. One is a whistle to go to the right?

A. That is to go to the right.

Q. What did she do when she blew the whistle?

A. Then she sheered to the eastward.

Q. Had she passed you when you passed the Arnold?

126 A. The Arnold was by us or about abreast of us, or somewhere around there. She was out of the line of my seeing her in the pilot-house.

Q. (By Mr. Benedict.) You didn't see her?

A. I saw her when she passed, but I sat in the pilot-house after she passed the line of being abreast of us, and then I lost sight of her. I didn't see her any more.

Q. (By the court.) That is the Rip?

A. No, sir; the Arnold.

Q. (By Mr. Mahon.) Where was the Arnold at that time?

A. The Arnold was on the east side of the channel.

Q. How close to the east bank?

A. She was quite away off from us; I could not tell how close she was.

Q. About how far off from you?

A. She must have been 500 or 600 feet, may be more for ought I know.

Q. Was there room enough between you and the Arnold for the Rip and the Syracuse to have passed with safty?

A. There was room enough between the two tows.

Q. Did you pass the Arnold before the Rip came up?

A. Yes, sir.

127 Q. Just state what took place when the Rip passed you?

A. It was spoken off in the pilot-house.

(Objected to.)

Q. As the Rip passed you, how much room did she give you?

A. She must have given us 300 feet or over.

Q. Was there plenty of room for the Syracuse to have gone between you and the Rip at that time?

A. That would have been close work, right there.

Q. Did you observe the Rip pass the Arnold?

A. No, sir.

Q. Why didn't you observe her pass the Arnold?

A. Because she was out of my line of seeing her—I was looking ahead.

Q. She was out of your line of vision?

A. Yes, sir.

Q. Did the Rip pass you before you got to the Arnold, or after?

A. It was after the Rip passed us.

Q. After you got by the Arnold?

A. Yes, sir.

Q. How long after the Rip passed you was it before you heard anything?

A. Well, it was a very short time; I should think a minute or
128 so—a minute and a half, or something of that kind, as near as
I can recollect.

Q. What did you hear?

A. I heard a crash.

Q. Did you hear anything then?

A. I heard Captain Frank holloa.

Q. What?

A. He hollered, "How are you coming there?" That was before the crash.

Q. What then did you do when you heard the crash?

A. I looked around to my left and saw a boat coming; I supposed it was the Annie.

Q. You looked out of your port window?

A. Yes, sir; around to the left.

Q. How was she coming at that time?

A. She was coming quartering towards us.

Q. Heading in what direction?

A. Heading partly for the Johnson, & quartering, coming towards the Johnson.

Q. Her stem was heading to what part of you?

A. She was heading towards us. I could tell exactly about what part of the boat.

Q. She was on an angle, heading towards you?

A. Coming in towards us.

129 Q. About how far off was she when you first saw her?

A. She might have been a length of the Syracuse from us.

Q. About how long is that?

A. It is over 200 feet.

Q. What next did you see?

A. Then I went out to look out for my hawser tier.

Q. Before you went out there the Syracuse came up to you?

A. She was along side and touched our fenders.

Q. In this angular course that she was on, she came up and touched your fenders?

A. Yes, sir.

Q. That was after you heard the crash?

A. That was afterwards.

Q. Had you gone out of your pilot-house before that at the time she got up to your fenders?

A. Yes, sir.

Q. Where did you go to?

A. I went aft to look out for my boats.

Q. Then what order did you give, if any?

A. I ordered my pilot to sheer to the westward, so as to clear my boats from the Syracuse.

Q. Could you go to the westward?

A. He told me he was on top of the bank then.

130 Q. On top of the west bank?

A. On top of the west bank.

Q. Do I understand you to say the Syracuse then had got up to you, side and side?

A. She was at that time.

Q. Rubbing against your fender?

A. Yes, sir; she had just come up lightly along side.

Q. When you found you were on top of the channel bank, then what further did you do?

A. We kept going all the time, and before our hawser tier came up to the Syracuse, she started ahead and then stopped again.

Q. Started ahead and cleared your hawser tier?

A. Yes, sir.

Q. What then took place?

A. Then we passed and went along about our business?

Q. At the time you looked out of your port windows, and saw the Syracuse quartering on you, about her length off—200 feet—I want to know whether there was room enough [enough] between the course of the Rip and the course of the Johnson for the Syracuse to have gone through in safty.

131 A. Up to the time when she passed us she was going quartering for Merino Point. The Rip was, probably, at the time—she actually was—right abreast of us; it would have been tight work to have passed us there.

Q. But the Syracuse could not get down to you then.

A. I didn't see her; she was not there; if she had been there, I would have seen her.

Q. About how much room was there between your course and the Rip's course?

A. After she passed us?

Q. Yes, sir.

A. The Rip and the Arnold both, after they got past, they being abreast of us, I lost sight of them and didn't look at them any more.

Q. How much room was there between the Rip as she passed you and yourself.

A. 300 feet or over.

A. She must have been 500 or 600 feet, may be more for ought I know.

Q. Was there room enough between you and the Arnold for the Rip and the Syracuse to have passed with safty?

A. There was room enough between the two tows.

Q. Did you pass the Arnold before the Rip came up?

A. Yes, sir.

127 Q. Just state what took place when the Rip passed you?

A. It was spoken off in the pilot-house.

(Objected to.)

Q. As the Rip passed you, how much room did she give you?

A. She must have given us 300 feet or over.

Q. Was there plenty of room for the Syracuse to have gone between you and the Rip at that time?

A. That would have been close work, right there.

Q. Did you observe the Rip pass the Arnold?

A. No, sir.

Q. Why didn't you observe her pass the Arnold?

A. Because she was out of my line of seeing her—I was looking ahead.

Q. She was out of your line of vision?

A. Yes, sir.

Q. Did the Rip pass you before you got to the Arnold, or after?

A. It was after the Rip passed us.

Q. After you got by the Arnold?

A. Yes, sir.

Q. How long after the Rip passed you was it before you heard anything?

128 A. Well, it was a very short time; I should think a minute or so—a minute and a half, or something of that kind, as near as I can recollect.

Q. What did you hear?

A. I heard a crash.

Q. Did you hear anything then?

A. I heard Captain Frank holloa.

Q. What?

A. He hollered, "How are you coming there?" That was before the crash.

Q. What then did you do when you heard the crash?

A. I looked around to my left and saw a boat coming; I supposed it was the Annie.

Q. You looked out of your port window?

A. Yes, sir; around to the left.

Q. How was she coming at that time?

A. She was coming quartering towards us.

Q. Heading in what direction?

A. Heading partly for the Johnson, & quartering, coming towards the Johnson.

Q. Her stem was heading to what part of you?

A. She was heading towards us. I could tell exactly about what part of the boat.

Q. She was on an angle, heading towards you?

A. Coming in towards us.

129 Q. About how far off was she when you first saw her?

A. She might have been a length of the Syracuse from us.

Q. About how long is that?

A. It is over 200 feet.

Q. What next did you see?

A. Then I went out to look out for my hawser tier.

Q. Before you went out there the Syracuse came up to you?

A. She was along side and touched our fenders.

Q. In this angular course that she was on, she came up and touched your fenders?

A. Yes, sir.

Q. That was after you heard the crash?

A. That was afterwards.

Q. Had you gone out of your pilot-house before that at the time she got up to your fenders?

A. Yes, sir.

Q. Where did you go to?

A. I went aft to look out for my boats.

Q. Then what order did you give, if any?

A. I ordered my pilot to sheer to the westward, so as to clear my boats from the Syracuse.

Q. Could you go to the westward?

A. He told me he was on top of the bank then.

130 Q. On top of the west bank?

A. On top of the west bank.

Q. Do I understand you to say the Syracuse then had got up to you, side and side?

A. She was at that time.

Q. Rubbing against your fender?

A. Yes, sir; she had just come up lightly along side.

Q. When you found you were on top of the channel bank, then what further did you do?

A. We kept going all the time, and before our hawser tier came up to the Syracuse, she started ahead and then stopped again.

Q. Started ahead and cleared your hawser tier?

A. Yes, sir.

Q. What then took place?

A. Then we passed and went along about our business?

Q. At the time you looked out of your port windows, and saw the Syracuse quartering on you, about her length off—200 feet—I want to know whether there was room enough [enough] between the course of the Rip and the course of the Johnson for the Syracuse to have gone through in safty.

131 A. Up to the time when she passed us she was going quartering for Merino Point. The Rip was, probably, at the time—she actually was—right abreast of us; it would have been tight work to have passed us there.

Q. But the Syracuse could not get down to you then.

A. I didn't see her; she was not there; if she had been there, I would have seen her.

Q. About how much room was there between your course and the Rip's course?

A. After she passed us?

Q. Yes, sir.

A. The Rip and the Arnold both, after they got past, they being abreast of us, I lost sight of them and didn't look at them any more.

Q. How much room was there between the Rip as she passed you and yourself.

A. 300 feet or over.

Q. I understand you to say, you didn't observe the Rip pass the Arnold.

A. No, sir.

Q. How fast were you going that night?

A. We might have been going through the water probably 3 or 4 miles an hour. I cannot tell exactly with the flood against us.

132 Q. (By Mr. Benedict.) So by land you didn't go more than 2 miles, I suppose.

A. No, sir.

No cross-examination.

Theodore R. Denning sworn on behalf of libellants:

Examined by Mr. McMachon:

Q. You were the pilot of the Joe Johnson?

A. Yes, sir.

Q. Were you in the pilot-house at the time?

A. I was.

Q. How long have you followed the water?

A. About nine years.

Q. Do you recollect passing the Rip Van Wrinkle, and passing the Arnold?

A. Yes, sir.

Q. Did you pass the Arnold before you passed the Rip?

A. Yes, sir; we did.

Q. How near did your vessel go to the west bank?

A. About 100 feet, I should think, from the west channel bank; it might not have been as far as that.

133 Q. Do you recollect the Syracuse coming up to you?

A. Yes, sir.

Q. State how she came up to you.

A. She came up quartering on us. She was heading a little aft of our bow, towards us, when I first saw her.

Q. About how far off was she at that time?

A. I should think she was a length off.

Q. A length of her?

A. A length of the Syracuse.

Q. (By Mr. Benedict.) How long is that?

A. I should say the Syracuse was 232 feet long; I don't know exactly the length of her.

Q. (By Mr. McMahon.) Did she strike against your fender?

A. The barge she had on her starboard side hit our port fender.

Q. What kind of a blow?

A. It was not very hard—an easy blow.

Q. Did she strike anything else before that?

A. I suppose she hit the Rip. I heard a crash, but didn't see it.

Q. About how long before you observed her quartering on you did you hear the crash?

A. As soon as I heard the crash, I looked out of the window
134 and I saw her coming.

Q. Her stern was then her length off from you at that time?

A. Yes, sir.

Q. How far off was the Arnold from you when you passed her?

A. I should think she was 700 feet from us when she passed us to the eastward of us.

Q. How near to the east channel bank?

A. I could not tell how near she was; they looked to be pretty close.

Q. Was she hugging the flat?

A. I suppose she was hugging the east flat.

Q. At the time she passed you, was there room enough bet there for the two vessels to have gone up and down—the Rip and Syracuse?

A. Yes, sir.

Q. At the time you observed the Syracuse her length off, a quartering on you, was there room enough between you and the Arnold?

A. I could not see the Rip. I could not see the Arnold at that time.

Q. When you looked out of your port windows, did you see the Arnold then?

135 A. No, sir; I did not; I saw only the Syracuse.

Q. Both the Arnold and the Rip had got beyond you?

A. Yes, sir.

Q. (By the court.) How near were you to the west shore?

A. I should think we were about 100 feet from the west flats.

Q. Had you looked back out of your pilot-house and seen the Syracuse prior to that time?

A. No, sir; I had not.

Q. (By Mr. Mahon.) When did you first see the Rip?

A. As soon as she come in sight around Roger's Island, I saw her.

Q. How far off was that?

A. I should think a mile and a quarter or a mile and a half.

Q. How was she as to the usual course?

A. She was in the usual course of steamboats going up the river.

Q. What course was that?

A. She was steering a north course, following the west land.

Q. When do you change?

A. As soon as she hits the west land she hauls more to the eastward; when she gets to Briandowne's Hollow she changes her course for Hudson lights.

136 Q. At that night when she got opposite Brandow's Hollow, she changed her course for Hudson's lights?

A. Yes, sir.

Q. Did you hear the whistle?

A. Yes, sir.

Q. Did you answer the whistle?

A. Yes, sir; I answered the whistle.

Q. Did you hear the Syracuse answer it?

A. No, sir; I don't think I heard the Syracuse answer the whistle.

Q. (By the court.) One long blast?

A. No, sir; it was one blast of the whistle.

Q. (By Mr. McMahon.) The usual blast?

A. Yes, sir.

Q. You understood very well what the blast meant?

A. Yes, sir.

Q. And any pilot of a steamboat would understand it?

A. Yes, sir.

Q. Did you observe the Rip take any course but the usual course that night?

A. Yes, sir; I noticed she kept going to the eastward a little more than usual.

Q. Did you make any remark about that?

A. I did.

Q. What did you notice about that?

A. I seen that she kept further to the eastward.

Q. I understand you to say, you didn't observe the Rip pass the Arnold.

A. No, sir.

Q. How fast were you going that night?

A. We might have been going through the water probably 3 or 4 miles an hour. I cannot tell exactly with the flood against us.

132 Q. (By Mr. Benedict.) So by land you didn't go more than 2 miles, I suppose.

A. No, sir.

No cross-examination.

Theodore R. Denning sworn on behalf of libellants:

Examined by Mr. McMachon:

Q. You were the pilot of the Joe Johnson?

A. Yes, sir.

Q. Were you in the pilot-house at the time?

A. I was.

Q. How long have you followed the water?

A. About nine years.

Q. Do you recollect passing the Rip Van Wrinkle, and passing the Arnold?

A. Yes, sir.

Q. Did you pass the Arnold before you passed the Rip?

A. Yes, sir; we did.

Q. How near did your vessel go to the west bank?

A. About 100 feet, I should think, from the west channel bank; it might not have been as far as that.

133 Q. Do you recollect the Syracuse coming up to you?

A. Yes, sir.

Q. State how she came up to you.

A. She came up quartering on us. She was heading a little aft of our bow, towards us, when I first saw her.

Q. About how far off was she at that time?

A. I should think she was a length off.

Q. A length of her?

A. A length of the Syracuse.

Q. (By Mr. Benedict.) How long is that?

A. I should say the Syracuse was 232 feet long; I don't know exactly the length of her.

Q. (By Mr. McMahon.) Did she strike against your fender?

A. The barge she had on her starboard side hit our port fender.

Q. What kind of a blow?

A. It was not very hard—an easy blow.

Q. Did she strike anything else before that?

A. I suppose she hit the Rip. I heard a crash, but didn't see it.

Q. About how long before you observed her quartering on you did you hear the crash?

A. As soon as I heard the crash, I looked out of the window
134 and I saw her coming.

Q. Her stern was then her length off from you at that time?

A. Yes, sir.

Q. How far off was the Arnold from you when you passed her?

A. I should think she was 700 feet from us when she passed us to the eastward of us.

Q. How near to the east channel bank?

A. I could not tell how near she was; they looked to be pretty close.

Q. Was she hugging the flat?

A. I suppose she was hugging the east flat.

Q. At the time she passed you, was there room enough between there for the two vessels to have gone up and down—the Rip and the Syracuse?

A. Yes, sir.

Q. At the time you observed the Syracuse her length off, a quartering on you, was there room enough between you and the Arnold?

A. I could not see the Rip. I could not see the Arnold at that time.

Q. When you looked out of your port windows, did you see the Arnold then?

135 A. No, sir; I did not; I saw only the Syracuse.

Q. Both the Arnold and the Rip had got beyond you?

A. Yes, sir.

Q. (By the court.) How near were you to the west shore?

A. I should think we were about 100 feet from the west flats.

Q. Had you looked back out of your pilot-house and seen the Syracuse prior to that time?

A. No, sir; I had not.

Q. (By Mr. Mahon.) When did you first see the Rip?

A. As soon as she come in sight around Roger's Island, I saw her.

Q. How far off was that?

A. I should think a mile and a quarter or a mile and a half.

Q. How was she as to the usual course?

A. She was in the usual course of steamboats going up the river.

Q. What course was that?

A. She was steering a north course, following the west land.

Q. When do you change?

A. As soon as she hits the west land she hauls more to the eastward; when she gets to Briandowne's Hollow she changes her course for Hudson lights.

136 Q. At that night when she got opposite Brandow's Hollow, she changed her course for Hudson's lights?

A. Yes, sir.

Q. Did you hear the whistle?

A. Yes, sir.

Q. Did you answer the whistle?

A. Yes, sir; I answered the whistle.

Q. Did you hear the Syracuse answer it?

A. No, sir; I don't think I heard the Syracuse answer the whistle.

Q. (By the court.) One long blast?

A. No, sir; it was one blast of the whistle.

Q. (By Mr. McMahon.) The usual blast?

A. Yes, sir.

Q. You understood very well what the blast meant?

A. Yes, sir.

Q. And any pilot of a steamboat would understand it?

A. Yes, sir.

Q. Did you observe the Rip take any course but the usual course that night?

A. Yes, sir; I noticed she kept going to the eastward a little more than usual.

Q. Did you make any remark about that?

A. I did.

Q. What did you notice about that?

A. I seen that she kept further to the eastward.

Back

Q. Did she give you plenty of room?

A. Yes, sir; she gave us plenty of room.

137 Q. How far was she off from you at the time she passed you?

A. She was 300 feet off, at the least.

Q. And at that time was there room enough for the Syracuse to have gone between you and her?

A. The Syracuse could have gone between us and her, if she had been there at the time.

Cross-examined:

Q. How long was your boat?

A. I could not say; I should think it was 160 feet.

(Mr. Benedict asked Capt. Oliver what the length of his boat was, who replied that it was 142 feet.)

Hiram Seward sworn on behalf of libellants:

Examined by Mr. Mahon:

Q. You were pilot of the Oliver A. Arnold on the occasion of the collision.

A. Yes, sir.

Q. How long have you followed the water?

A. Ten years.

Q. Been a steamboat pilot how long?

A. Four years.

Q. (By the court.) On the Hudson?

A. Yes, sir.

138 Q. (By Mr. McMahon.) On that night how much of a tow did your vessel have?

A. We had four vessels.

Q. At the end of the hawser?

A. Yes, sir.

Q. How long hawser?

A. Between 300 and 400 feet.

Q. Were they abreast?

A. Yes, sir; four abreast.

Q. You had no boats on your side?

A. No, sir; we had nothing along side.

Q. How fast were you going that night?

A. Three or four miles an hour by land, I should judge, with a flood tide.

Q. You recollect passing Brandrow's Hollow?

A. Yes, sir.

Q. What did you see when you passed Brandrow's Hollow?

A. I seen two steam-tows coming down. I had not got up to the hollow.

Q. You observed them before you got up to the hollow?

A. Yes, sir.

Q. When you got up to the hollow, what did you do?

A. I didn't get quite up to the hollow; when I opened the Hudson lights, I straightened up. I was not quite up to the hollow then.

139 Q. At that time had you reached the Joe Johnson?

A. No, sir.

Q. How much width of channel was there between your course and the Joe Johnson course at the time?

A. I should think 600 feet or over.

Q. (By the court.) You passed 600 feet apart?

A. Yes, sir.

Q. How near were you to the east bank of the channel when you passed the Johnson?

A. I should think we were 40 or 45 feet, or more, I should judge, when we got up where she was.

Q. (By Mr. McMahon.) Could the Rip have gone between you and the east channel bank?

A. I don't think she could.

Q. What did you observe after you opened these lights?

A. I seen the Syracuse. The stern tow sheer up, I suppose, to clear the other tow.

Q. You observed one of these two tows sheer out into the river?

A. Sheer out into the river to clear the other tow, I suppose.

Q. What did you do then?

140 A. I looked astern and saw the Rip Van Wrinkles coming.

Q. Which way was she coming at that time?

A. She was coming straight across about that time.

Q. Straight across where from?

A. Brandrow's Hollow.

Q. Pointing in what direction?

A. Pointing up for Hudson lights, or to the nortward of them—about her course that she usually takes.

Q. Did you hear any whistle at that time?

A. Yes, sir; I heard two whistles.

Q. You heard a whistle and then two answers?

A. One answer. I only heard two whistles alltogether.

Q. After you observed the Rip, what did you do?

A. When I saw the Rip coming, I sheered in more to the eastward.

Q. For what purpose?

A. To give her room to go by.

Q. How far off did you hug the bank at that time?

A. I think 40 or 50 feet or so. I should judge from where I was the course I was going.

Q. Did the Rip pass you?

141 A. Yes, sir.

Q. State what you saw after she passed you.

A. The Rip passed me, and after she passed me I straightened up and heard a crash.

Q. How far had she got past you at the time you heard the crash?

A. A length or a length and a half, or two lengths, in that neighborhood, I should judge.

Q. How long is she?

A. I suppose about 260 feet, I should judge.

Q. Then she had got about 400 feet?

A. Somewhere in that neighbourhood, a length or two lengths, somewhere in that neighbourhood.

Q. And off of which bow did she show herself?

A. The port bow.

Q. And about how far from your course; how far to the westward of your course?

A. At the time the collision was?

A. At the time she passed you.

A. I had straightened up; she was headed more to the eastward than I was then; I was about straightened up at the time I heard the crash.

Q. How far was she to the westward of your course at the time

142 you heard the [the] crash?

A. She was to the eastward of my course; she was headed more to the eastward than she was at the time the crash was, because I straightened up.

Q. Was she ahead of you?

A. Yes, sir; she was ahead of me on my port bow; I had straightened up as she was coming across.

Q. Did you observe the Syracuse at the time of the collision?

A. I did not; I saw her just before the collision, but did not at that time.

Q. Did you observe any change of the Syracuse course after she took the sheer; could you tell whether she broke it or not?

A. I did not.

Q. You did not observe any?

A. No, sir; I did not pay much attention to her; I seen the Rip pass me.

Q. What effect did this crash have upon the Rip?

A. It knocked her right ahead of me, shoved her over.

Q. What did you do?

A. I slowed.

Q. What did you observed, if anything, after you slowed?

A. I called the captain up, for I didn't know but the Rip might
143 want some assistance. I seen the Syracuse and I took her to be
one of Mr. Austin's boats. I didn't know what boat it was at
the time.

Q. If I understand you right, you observed the Syracuse take a sheer to go into the river?

A. Yes; sir, to clear the head ~~two~~ tow —

Q. And you didn't observe any change of that course up to the time of the collision?

A. I did not.

Q. But she was out of your line of vision after the Rip passed you?

A. Yes, sir; after the Rip passed me.

Q. At the time you observed her sheer to go into the river, was there room enough for her to have gone between you and the Joe Johnson?

A. Room enough for the Syracuse?

Q. Yes, sir.

A. Yes, sir; to have gone between me and the Johnson?

Q. Yes, sir.

A. There was plenty of room.

Q. Was there plenty of room for the Rip and the Syracuse to have gone between?

A. Yes, sir.

Q. How much width do you think was between you and the Johnson?

A. I should think 500 or 600 feet.

Q. (By the court.) How far off into the river if at all did your
144 tow pay by the wind? The wind was what?

A. To the southeast when I saw the Rip by my sheering more to the east; that would throw me down the further, being a flood tide.

Q. How far off—at what angle of your port quarter?

A. About the length of the boats.

Q. How wide were the boats?

A. There were four boats. I should think 50 odd feet altogether. I think a canal-barge is 13 or 14 feet wide.

Q. Would that carry the starboard boat of the tow as far to the port as your port line on the west side? Would you tow tail off as far as the bow of the starboard boat in a line with your side?

A. The boats would be heading toward me, but they would swing. By my sheering to the eastward, would throw his bow to the east of me, but the bow would be hanging off that way.

Q. How far?

A. It might have been off 50 or 60 feet, I should judge.

Q. (By Mr. McMahon.) How far was your tow from the east channel bank?

A. My tow was further off.

145 About how far off?

A. It might have been 100 feet.

Q. Whereas you were about 50 feet?

A. Yes, sir.

Q. (By the court.) According to your view the boats would be 100 feet from the channel bank?

A. Yes, sir.

Q. About how near did the Rip Van Wrinkle pass to you?

A. I should think 200 feet, may be more; it is all guess-work.

Cross-examined:

Q. How long is your vessel?

A. She is 68 feet, I think.

Q. She is a propeller?

A. Yes, sir.

Q. Did you say how long her hawser was?

A. 300 or 400 feet—between 300 or 400 feet.

Q. I understand you to say that the collision took place after the Rip passed you?

A. Yes, sir.

Q. Ahead of you?

A. Yes, sir.

William A. Witherwax recalled:

Examined by Mr. McMahon:

Q. Do you wish to make any explanation about anything; and, if so, what?

146 A. Yes, sir; I believe I was not understood right yesterday—what I explained—& I should like to rectify that. In my statement, I said the Syracuse kept her course. After we had passed this propeller, we were heading to the eastward. It was the time the Syracuse sheered out to pass the Johnson. I supposed she took that sheer and kept that course, and didn't alter that course till she hit us, as far as I could see.

Q. Had you observed her sheer, too?

A. Yes, sir; I spoke about that before she got any way near us; I spoke to Captain Frank about it, & they didn't understand me yesterday; I told them about keeping her course, & they didn't understand it in the way I meant to explain it.

Q. She took a sheer and kept that sheer?

A. Yes, sir; she sheered off to clear the tow, I suppose; she sheered out to clear the tow.

Q. What did you say about striking the gangway?

A. She struck us right at the forward gangway. It is near our forward gangway, but I won't say whether it was aft or fo'ward; I

147 think it was a little aft of her forward gangway, but a little close to our wheel.

Q. Did she strike into you hull, or did she shave you close on the left-hand side?

A. She struck us well head on. Where she struck us it took kitchen and all off right there.

Q. She shaved your left-hand side right off?

A. Yes, sir; struck pretty well head on, or she would have not went in so far as to take away the kitchen and all the value.

Charles Hayford sworn on behalf of libellants:

Examined by Mr. McMahon:

Q. How long have you followed the water?

A. About 23 years.

Q. Have you ever been pilot of the Syracuse?

A. I have.

Q. How long?

A. I don't know exactly; it was four or five years, I think.

Q. Was she engaged in towing the time you were pilot of her?

148 A. She was.

Q. Where?

A. Albany & New York.

Q. How powerful of a boat is she for towing purposes?

A. She is a first-class boat.

Q. What power is her engine?

A. 72^{12}, I believe.

Q. How fast will she go with two barges on her side, such as you have heard the witnesses; one an ice-barge on the port side, and the other a canal-barge on the starboard side?

A. She can take them 8 miles an hour.

Q. Would you call that a light tow for her?

A. Yes, sir; that is a very light tow.

Q. Suppose the port tow is heavily laden, and draws 10 feet of water, and the right tow is about one-third to one-half laden, and draws six or seven feet of water, & suppose that a sheer is taken, & she keeps in motion—just describe to the court your experience with that boat; what effect it has on her steerage.

A. It will haul the steamboat to port.

Q. (By the court.) Haul the side of the heaviest barge?

A. Yes, sir; she will tow harder than the other barge, & will

149 pull off that way.

Q. (By Mr. McMahon.) That is provided she keeps in motion?

A. Yes, sir; certainly.

Q. Suppose they attempt to stop, what effect will it have?

A. The heaviest barge will run the steamboat around the other way. When they fetch up on the stern line, she will fetch up hardest, and will jurk her around.

Q. The moment they stop her, it will make her go to the starboard?

A. Yes, sir.

Q. And while she is kept in motion, it will make her go to port?

A. Yes, sir.

Q. How many men ought to be in the wheel-house of the Syracuse to take charge of that wheel as a matter of prudence?

A. One man always steered her when I was there. That is all we ever had to steer her.

Q. But what is the prudent course of it?

(Objected to.)

Q. Suppose she had got a sheer on her to port that way, could one man break it in the wheel-house?

A. By using the proper means he could; by handling his tools
150 properly, he would break it some time or other.

Q. Could he break it as quickly as if he had two there?

A. If that steamboat was going along with two barges at her ordinary full speed, and she got a good sharp sheer on her, and he kept his engine going, he could not get his wheel over in a very long time; one man could not. I don't know that he could at all; but by ringing his bells, & slowing his boat, & reducing her speed down he generally can get his wheel over.

Q. How long a time would it take to do that?

A. I cannot tell what time. I don't think one man could get over at all going at that speed; by handling his tools properly he could get it over.

Q. How far would the boat go before the sheer could be broken?

A. It would depend altogether on how sharp a sheer she had.

Q. Suppose she was going eight miles an hour, and it took a sharp sheer off to port?

A. She could be given a sharp sheer with two barges; she could be given a sharp sheer enough, and her engine kept going, so that if
151 any one man was going to break it, and straightened her down the river, she would go pretty nearly across the river there, if the sheer was sharp enough, and he kept her going.

Cross-examined:

Q. Do you mean to say you could not sheer a boat when she was under headway? Suppose she is under eight miles an hour headway, do you mean to say you could not change her direction in less than the width of the river?

A. Not at all; I don't mean to say any such thing.

Q. What is breaking the sheer but breaking the direction?

A. I mean to say that if she is given a sheer at that place with two barges, & her engine is kept going, & she is got to have that sheer broken, & straightened right down the river again with only one man to do it, inasmuch as he cannot get her wheel over himself before he can get her sheer broken, she will go pretty well across the channel there.

Q. Here is one man in a boat, and she is going eight miles an hour; do I understand you to say that you cannot get her on to a rank sheer in less distance than across the river?

152 A. I do, if you keep her engine going; I don't say she will take the whole of the channel; under those circumstances she would go well across the channel.

Q. Suppose you had got the heaviest boat on your port side & you starboarde your wheel, would it make a great difference?

A. She will sheer to the east the easier and to west the harder; one man would not break her sheer and get her straightened down the river again on her course.

Libellants rest.

Philip Lansing sworn on behalf of claimants:

Examined by Mr. Benedict:

Q. Where you captain of the Syracuse at the time of the collision?

A. Yes, sir.

Q. What time did you leave Albany?

A. I think it was between 7 and 8 o'clock in the evening.

Q. What time did the collision take place?

A. I should think it was between 1 & 3; I don't know exactly; somewhere about 2 o'clock in the morning, I should think.

Q. Did you attend to the making-up of your tow—putting on your barges?

153 A. Yes, sir.

Q. You had two?

A. Yes, sir.

Q. One on each side lashed?

A. Yes, sir.

Q. Where they as long as your boat?

A. No, sir.

Q. What were those—barges or canal-boats, or what?

A. Barges.

Q. Both barges?

A. Yes, sir.

Q. Loaded?

A. One of them was loaded, and the other about half-loaderd.

Q. Which one was loaded?

A. The ice-barge.

Q. That was on your larboard side?

A. Yes, sir.

Q. How much did she draw?

A. I should think she drew about 10 feet; I don't know for certain; I should think about 10 feet; and the other one on the other side about six.

Q. Were both the barges about the same length?

A. I don't know whether they were or not; there was not much difference anyhow, I think.

Q. Where they considerably shorter than your boat?

154 A. Yes, sir.

Q. Did they come as far forward as your boat; did there bows meet?

A. Neither one; the ice-barge was about 20 feet aft her bow, & the other one a little further forward than the ice-boat. We could not have got the ice-boat as far forward on account of her chocks.

Q. Her bow was about 20 feet astern of your bow?

A. Yes, sir.

Q. And the other barge?

A. I think the other was about 15 feet from our bow.

Q. They were lashed fore and aft?

A. Yes, sir.

Q. The Syracuse is a side-wheel steamer?

A. Yes, sir.

Q. Had you any smoke-stack?

A. We had a little short piece.

Q. How did that happen?

A. We were going a spell before that, & got in a gale of wind & blowed her smoke-stack off, all but a short piece.

Q. How high was that short piece?

A. Well, I think, somewhere about 20 feet.

155 Q. What effect did that have on the speed of the boat, having such a smoke-stack?

A. We could not get much steam with that short smoke-stack. We could hardly run; had to run very slow. When we were going up we could not take our tow up at all. The American had to take us up the time before this, on account of that short pipe.

Q. No draft?

A. No draft.

Q. How fast were you going by land when you got down below Hudson, the place of this collision? At that same time did you keep right straight on from Albany up to the time of the collision, or did you stop at Athens?

A. We stopped at Athens and took the ice-barge on there.

Q. About how far was it below Athens where the collision took place?

A. I should think somewhere about two miles and a half or three miles.

Q. About half-way down to Catskill?

A. It is not much odds of half-way. It is according to what part of Ath'ns you go.

Q. How fast were you going at the time of the collision?

A. Through the water or by land?

Q. We will first say by the land, before you stoppoed or slowed the engine?

156 A. I should think she might have been going four to five miles throug the water.

Q. And by the land?

A. She might have been going three miles and a half by the land.

Q. When did you first see the Joe Johnson?

A. I seen the Joe Johnson when we were to 4-mile Point.

Q. Where is that?

A. That is about four miles above Athens.

Q. That is where you first saw the Joe Johnson?

A. Yes, sir.

Q. How far was she from you when you first saw her?

A. Well, I suppose she was, when I first saw her, about two miles above Athens.

Q. Where were you?

A. We were about a mile below 4-mile Point.

Q. How far off was the Joe Johnson from you when you first saw her?

A. She was about two miles ahead of us, going down the river.

Q. When you first saw the Joe Johnson, it was about 4 miles above the collision?

157 A. Yes, sir; but I don't understand—where the Joe Johnson was or where I was; which do you want to know? The Joe Johnson an me were some distance apart.

Q. How far were you from the place of collision when you first saw the Joe Johnson?

A. Somewhere about six miles.

Q. She was bound the same way you was, down the river?

A. Yes, sir.

Q. After you left Athens and aproached the place of collision, who was at the wheel?

A. Mr. Marshall.

Q. The pilot?

A. Yes, sir.

Q. Who was on the look-out?

A. There were two men.

Q. Who were they?

A. I don't recollect their names exactly; I think one of them was Styles Wood.

Q. When did you first see the Rip Van Winkle?

A. Just before the collision.

Q. (By the court.) About how long before?

A. Well, from half to three quarters of a mile. I don't know the time.

158 Q. (By Mr. Benedict.) How far was the Joe Johnson then ahead of you at the time you saw the Rip Van Winkle first?

A. I should think she was some three or four lengths of the Syracuse ahead of us.

Q. (By the court.) How long are you?

A. I don't know how long the Syracuse is.

Q. (By Mr. Benedict.) Was she directly ahead of you, or on one bow or the other?

A. She was on our starboard bow. We had passed her hawser tier. We had just got ahead of her hawser tier, and she had to be on our starboard side.

Q. How near was the Joe Johnson to the edge of the channel?

A. I should think she was about 200 feet off.

Q. About 200 feet off the edge of the channel?

A. Yes, sir.

Q. How far were you from her, off from her line of direction?

A. I calculated about 20 feet; our course was about 20 feet aport of her course.

Q. Did you overtake the Joe Johnson before the collision?

A. We just lapped about 10 feet on her stern before the collision. I should judge it was about 10 feet; it might have been 15. I cannot tell as to the foot.

Q. Then you had passed her hawser tier?

A. Yes, sir.

159 Q. Did you pass near the hawser tier of the Joe Johnson?

A. Well, middling close. Probaly when we were to her hawser tier, we were a little further off than when we got down to the Joe Johnson.

Q. Did you hear the whistle of the Rip V. W.?

A. No, sir; I didn't hear the Rip Van Winkle.

Q. Did you hear the whistle of the Joe Johnson?

A. Yes, sir.

Q. One whistle?

A. Yes, sir.

Q. Did the Syracuse give any whistle?

A. Yes, sir; one whistle.

Q. How long was that before the collision?

A. That is pretty hard for me to tell. I can give the distance.

Q. Give the distance?

A. I should think that was about a half a mile; a little more than a half a mile; it might have been $\frac{3}{4}$ of a mile off when our whistle blew. The Rip Van Wrinkle might have been three quarters of a mile off when our whistle blew.

Q. Where were you at the time the whistle blew?

A. On deck.

Q. Whereabouts?

160 A. In the engine-room.

Q. (By the court.) You say you didn't hear the Rip Van Winkle whistle.

A. I don't know whether it was the Rip's whistle or not. I was in the engine-room.

Q. You said you heard the Johnson whistle?

A. Yes, sir.

Q. Did you hear any other whistle?

A. I heard our'n.

Q. (By Mr. Benedict.) Did you stay in the engine-room till the collision?

A. No, sir.

Q. Where did you go?

A. Well, I staid in there; the bell rang to slow her, and immediately the bell came to stop her; the engineer stood right by the engine and slowed her; and I passed right by there before he got her unhooked; he was in the act of unhooking her, & I had to shove myself by to get out to see what was the matter. I went out forward and seen the Rip. The first thing I noticed was the Johnson,& I thought we were going to hit her, & then I looked up and seen the Rip coming & seen the cause of his going so close to the Johnson. I went to see the cause of his going so close to the Johnson, & I went ahead and see the Rip coming.

161 Q. Did you see from what direction the Rip was coming?

A. She was coming up a northeast course.

Q. Did you see the Arnold?

A. I did.

Q. Where was she?

A. When I first saw the Arnold she was right off abreast of us.

Q. (By the court.) This means after the collision?

A. No, sir; we have not got to the collision yet.

(Witness illustrated with several models the position of the vessels at the time of the collision. He also made a diagram of their position, which was marked by the court Exhibit C.)

Q. (Referring to the diagram.) Do you mean to say, according to your recollection, that that is the true position of the vessels the instant before the collision?

A. Yes, sir.

Q. You were going a little faster than the Joe Johnson?

A. Yes, sir; when our engine was at work, we were going a little faster.

Q. You gained on her?

A. Yes, sir.

Q. Overhauled her, didn't you?

162 A. Yes, sir.

Q. Were you when you could see the Rip Van Winkle as she came up the last half mile?

A. Yes, sir.

Q. Did you look at her?

A. Yes, sir.

Q. Did you see that she changed her course at all?

A. Yes, sir.

Q. She did?

A. Yes, sir.

Q. When?

A. She was heading to the westward of both of us in the first place, when I first seen her, and then she changed her course and went to the eastward of us.

Q. Was there, in your judgment, room enough for the Rip Van Winkle to have gone to the westward of you?

A. It would have been pretty tight work.

Q. Had you been coming along down—you and the Joe Johnson aften leaving Athens—aften you got out into the river, and got the barge on at Athens—I want to know if you had gone along down the west side about that time, from that time till the time of the collision.

163 A. Well, I was not watching the Syracuse all the time from the time we picked the barge up. I went in the ganway, and the door was open. I didn't notice particularly where she was. I know she was steering after the Joe Johnson, but I didn't notice how far she was from one side of the river or the other after we started a spell.

Q. Do you know whether either the Johnson or the Syracuse went further to the westward, or starboarded, or ported her wheel, after you saw the Rip Van Winkle?

Bode X

A. I don't think they altered any; I don't think they sheered either way from the time I seen the Rip till the time they hit. They might possibly have headed a little more to the westward, but very little, if any.

Q. You heard the bells ring on your boat to slow and stop?

A. Yes, sir.

Q. Did she slow and stop?

A. She did slow and stop.

Q. How far off from the Rip Van Winkle did she slow & stop?

164 A. I don't know exactly how far the Rip was off when she first slowed, but when the bell rang to slow, an another one to stop, I went out forward and the engine was stopped. It was unhooked all this time, & I seen the Rip, and I supposed the Rip was not much odds of half a mile off then.

Q. Do you think the headway of the Syracuse was stopped?

A. I don't think anything about it. I know it was stopped when they struck.

Q. Not only her headway was stopped, but her engine was stopped?

A. The engine had been stopped all this time; the headway of the boat was stopped. The Joe Johnson was going right along by after we stopped.

Q. Did you ever handle the wheel of the Syracuse?

A. Yes, sir.

Q. What experience had you in it?

A. I handled off and on all last season, except a very short time. I was off for two or three weeks.

Q. Does she handle easy or not?

A. You can make her handle easy or hard, just as you have a mind to.

Q. What do you mean by that?

A. She is a good-handling boat.

Q. What do you mean by saying, You can make her handle easy or hard, just as you have a mind to?

165 A. You can stop her, or slow, or not, as you wish. If you let her go, and don't heave your wheel over, no boat will go; but she is very easily managed, if you use good judgment.

Q. Does she stop quick?

A. Very quick; the quickest of any boat I ever saw.

Q. Why?

A. She is a light-built boat, & she has got a very wide face to her wheel, & her wheel has got more depth than most of the boats down in the water, & her engine holds that wheel right still—has got control of that wheel, & holds that wheel right still—consequently she cannot shove this wheel throug the water much.

Q. Was there any difficulty, as far as you saw, or anything in the way to prevent the Rip Van Winkle sheering further off to the eastward, and clearing you?

A. If she had commenced to sheer a little sooner, I think she could have cleared us.

Q. How far do you think she was to the westward of the middle of the channel; was she in the middle of the channel or west of it?

A. I think she was close to the middle, a little to the westward of the middle of the channel. I think she was close to the middle of the channel to the west, if anything.

166 Q. How far off from that was the Arnold?

A. I should think the Arnold was some three or 400 feet to the eastward.

Q. Did you see any other vessel about?

A. I didn't notice any other.

Q. Were the lights up?

A. Yes, sir; we had two lights forward on her stem, & two white lights on her flag-staff.

Q. (By the court.) Double lights?

A. Yes, sir; a red light hanging under the white one.

Q. (By Mr. Benedict.) Lights astern?

A. Yes, sir; bow & stern, double light, and a red light under the two white lights astern.

Q. Are those the usual lights of tow-boats?

A. Yes, sir; the usual lights of that line; & other ones have a blue light instead of the red. Each one of the lines has its own signal.

Q. How long have you been on the river?

A. Twenty-six years.

Q. In what capacity?

A. Captain & pilot.

Q. Steamboats, all the time?

A. No, sir; I have been on sloops, and schooners, & steamboats.

Q. You have been deck-hand, too, I suppose.

A. Yes, sir.

167 Q. Did you hear any hail?

A. No, sir; I didn't hear a word spoken between the two pilots or the Syracuse or the Arnold or the Rip Van Winkle; no one spoke.

Q. How long have you been on steamers?

A. I have on steamers, I suppose, 20 years; and I have been off of them since & on a sloop, and then back on these.

Q. Did you see any stopping or slowing of the Rip as she came up?

A. No, sir; nothing of the sort. After she had got by, I supposed she stopped; I heard some steam blowing.

Q. Where did she strike the barge?

A. I think about 10 feet aft of the barge's bow; right along by the bluff of the bow.

Q. Where did she strike the Rip?

A. I think somewhere near her forward gangway.

Q. Did the stem of the Syracuse hit her at all?

A. No, sir.

Q. Did the stem of the barge hit?

A. No, sir.

Q. Just the bluff of the bow?

A. Just the bluff of the bow. The Rip Van Winkle is a little wider amidships than where she struck, & the further she went ahead the deeper she went in.

168 Q. After she struck the Rip Van Winkle, then what did you do?

A. I found her fender was carried away, and we went to work to get a fender in place of it. We have to go ahead once in a while to keep them from going ashore, and we went ahead once in a while to keep clear of the Joe Johnson & to keep from going ashore, and we would work at the fender between times while we were drifting.

Q. How near were you to the Joe Johnson at the time the two vessels came together?

A. I should think about 20 fee off. It was no further than 20 feet, for I thought we were going to hit the Joe Johnson.

Q. (By the court.) What is the width of the Syracuse over all?

A. I think 66 feet.

Q. What is the width of the barges?

A. I don't know the width of the barges.

Q. About what is the width of them?

A. It would be guess-work if I told you. I measured the Syracuse; that is the reason I know that.

Q. The barge is about 30 feet?

A. I should think this ere ice-barge was about 30 feet; it is only guess-work.

169 Cross-examined by Mr. McMahon:

Q. How long had you been in the engine-room before you came out?

A. I did'nt think I had been there a minute.

Q. Was your engine-room lit up?

A. Yes, sir.

Q. Then you had to come forward?

A. Yes, sir.

Q. How far did you have to come forward before you could see?

A. I cannot tell how far forward.

Q. Upper or lower deck, did you have to come forward?

A. Lower deck.

Q. How far do you suppose?

A. It has got to be guess-work.

Q. Give us a guess.

A. Well, it may be 75 to 100 feet; 75 feet may be; somewhere thereabouts; I cannot tell whether it was more or less.

Q. Is the passage-way lighted up through wich you pass?

A. Yes, sir; that is, there was no light hanging up ahead of me. There was a light hung through the after light; the lamp showed from aft, but there was no light ahead of me.

Q. What were you doing in the engine-room?

170 A. I usually went in there to see the engine work a little.

Q. What were you doing there?

A. I was not doing anything; I stood there talking.

Q. Were you not smoking there?

A. I didn't get a chance to smoke; I was going to before the bell rang.

Q. You went down there to have a smoke?

A. No, sir; I didn't go down there for any purpose; I said to the engineer, "Let us have a comfortable smoke before I go to bed."

Q. You went off the upper deck?

A. Yes, sir.

Q. Where had you been before?

A. On the upper deck, walking from forward to aft, and into the pilot-house, and so around her upper deck.

Q. Had you seen the Rip when you were on the upper deck?

A. No; I seen her when I was on the main deck; that was after I came out of the engine-room.

Q. Before you went in the engine-room, did you see the Rip?

A. No, sir.

171 Q. Then I understand you to say you were on the upper deck walking backward and forward, and you didn't see the Rip then?

A. No, sir; that was when we were picking up the ice-barge and after we got her along side.

Q. You didn't see the Rip?

A. No, sir.

Q. You went down to the engineer and said, "Let us have a comfortable smoke before I go to bed?"

A. Yes, sir.

Q. Did you have a smoke?

A. While we were talking about this, the bell came to slow her, and we didn't have a smoke.

Q. And how long did you remain in the engine-room when the bell came to slow?

A. One bell then came immediately to stop her; then I walked right out.

Q. You walked about 100 feet?

A. I don't know that it is 100 feet.

Q. 75 or 100 feet?

A. Yes, sir.

Q. After you came out of the engine-room, could you see as well in the dark?

172 A. These lights were very poor & dim; we were grumbling about the lights. There was no light ahead of me; there was a light in the gangway, but there was no light except these dim lights.

Q. The engine-room was lit?

A. Yes, sir; it was an oil lamp.

Q. Could you see distinctly when you went forward from these lighted places?

A. Such a night as that was?

Q. Yes, sir.

A. Yes, sir, I did. If the lights had been kerosene it would have made a difference, but this was very poor oil & poor lights. If it had been a kerosene light—a bright light, & I was looking at it, and left a lighted place, it might have made a difference in a man's eyes.

Q. If there was a bright light there, it might have made a difference?

A. It might sometimes; if it was a dark night, it would be likely to do so.

Q. When you came out, which part of your vessel did you go to?

A. I went on the forward deck.

Q. (By the court.) Port or starboard side?

A. Walked in the port gangway.

173 Q. (By Mr. McMahon.) How did the Rip at that time bear towards you?

A. At the time I first got on the forward deck and seen her?

Q. Yes, sir.

A. She was heading right to the westward when I first seen her.

Q. West of [of] your course?

A. Westward of the Joe Johnson's course & our own, both.

Q. Had you heard the whistle at that time?

A. I heard the Johnson's, but I didn't hear the Rip's.

Q. Had you heard the whistle before you went out of the engine-room?

A. Yes, sir.

Q. How long before?

A. The whistle blowed, & as soon as a man would naturally have time, the bell rang to slow her & then to stop her, & I walked out the minute it rang to stop; I heard her whistle & the Johnson.

Q. Then the bell rang?

A. Yes, sir; I went out to see what was the matter.

174 Q. At that time you say that the Rip was half to three quarters of a [a] mile away from you?

A. When I got out on the forward deck I don't think it was much odds of half a mile.

Q. She was to the westward of you?

A. Yes, sir; the minute I seen her she hauled off to the eastward to go to the eastward of us. She was pointed that way; I don't know which way they intended to go.

Q. Did you see any necessity for ringing those bells when you went out?

A. The Syracuse's bell?

Q. Yes, sir.

A. I thought he was in a hurry to stop her, the Rip being so far off. I should not have stopped her so soon if I had been steering.

Q. Didn't you at that time take a sheer to avoid the Joe Johnson's tow at the time you came out?

A. We were passed the hawser tier when I came out.

Q. Before you went down in the engine-room, had you sheered to avoid the Joe Johnson's tow?

A. No, sir; when I went off the uper deck she was steering after the Joe Johnson.

175 Q. What sheer, if any, took place while you weere in the engine-room?

A. I don't know that any took place; if any took place it must have taken place white I was in the engine-room or on deck; I only staid in the engine-room a very short time.

Q. Did you observe any sheer at all?

A. No, sir.

Q. After you came out on the forward deck, I would like you to describe the course of the Rip & the course of your vessel; you say you saw no necessity for these bells at that time?

A. I thought he stopped her very quickly, the boat being so far off.

Q. How far off were you from the Rip when your way was stopped?

A. Well, I guess our way was stopped dead when the Rip was about a length & a half or two from us, of the Rip's length.

Q. How was the Rip going all this time?

176 A. She was going by turning the wheel ahead.

Q. In what direction was she going?

A. She was first headed to the westward & then she canted and came that cause, and kept it until she hit.

Q. How far did she go outside of the Joe Johnson's course—I mean to the eastward of the Joe Johnson's course?

A. I would have to guess at that too.

Q. Give us a guess?

A. She was heading to the east, but she was not bodily there.

Q. I want to know where she was bodily.

A. What part of the Rip Van Winkle—bow, stern, or middle of her?

Q. Any part of her.

A. I should think it was about something about over one hundred feet from the Joe Johnson's bow; I should think somewhere about 100 feet; it might have been more or less.

Q. I understand you to say the Rip Van Winkle passed the Joe Johnson's bow in a canting direction?

177 A. Yes, sir; a little canting direction.

Q. 100 feet off, or thereabouts?

A. It might have been somewhere about there; I cannot tell exactly how far it was; this gauging of distances on the water is not very accurate.

Q. After that whistle was blown, did your port your hellm?

A. I don't know what was done with the wheel; we had no way on her, so heaving the wheel over it would not make any difference.

Q. You didn't stop her until after the whistle was blown?

A. I cannot tell whether he shifted her wheel before the whistle was blown.

Q. Do you know Capt. James Schook?

A. Yes, sir.

Q. He is in court here?

A. Yes, sir.

Q. Didn't you talk the matter over with him a day or two after this collision?

178 A. Well, I presume likely I might; I have talked with a good many; I don't know whether her was one or not; I guess likely he was one I talked with.

Q. Didn't you have a talk with him somewhere in Jersey City?

A. I think I did.

Q. You discoursed all about this collision?

A. I don't know how much was said, or what was said; I know I recollect setting in the "America's" pilot-house talking of it.

Q. Didn't you tell Captain Shook that the Syracuse had got a sheer, and you could not break your sheer, which was the reason you came into her.

A. No, sir; I did not.

Q. Didn't you say so to Capt. Post?

A. No, sir.

Q. He is in court?

A. I suppose so; he was here this morning; I didn't say so to no living man on this earth, because I had no reason to say so; I didn't see her take no sheer.

Q. You have not told any of these gentlemen that on that night the Syracuse had got a sheer on, and you could not break it?

A. No, sir; I never told no such thing.

179 Q. Didn't you tell any of these gentlemen that the Syracuse was to blame?

A. No, sir.

Q. Didn't you tell these gentlemen or Capt. Shook, or one of these gentlemen, that all hands had turned in on board of your vessel except Mr. Marshall, the pilot, and that you were in the engine-room, and that only the pilot and yourself, & the engineer & fireman were on duty, & there was no one on the barges?

A. No, sir; I told some of thes gentlemen that I and Mr. Austin were not on very good terms, but nevertheless he was not to blame in this case. I said so to some of them, but I don't know whether it was to him, or which one particular. I said we were not on any extra terms, but nevertheless he was not to blame in this case.

Q. (By the court.) You mean that the Syracuse was not to blame?

A. Yes, sir.

Q. (By Mr. McMahon.) How long a time elapsed between the time
you come out forward there and the time of [of] your aculally
180 coming together?

A. From the time I got out on the forward deck I should think it was—it might have been a minute and a half to two minutes from the time I first seen the Rip till she hit; not much odds of two minutes; it might have been a little less after I first seen her.

Q. (By the court.) It might have been a little more?

A. It might, possibly, have been a little more from the time I first saw her until the time of the collision.

Q. (By Mr. M. McMahon.) Do I understand you to say that the Rip was nearer to the west bank than the east bank of the channel?

A. I should think she was a little to the westward of the centre of the channel, in my judgment.

Q. How wide do you make the channel?

A. I measured it partly with the hawser; and I had a schooner
aground there, & had 100 fathoms of hawser, & probably the whole
of the hawser was out, and we were right straight across from
181 where the schooner was aground, & then I should think we were
about the length of the Syracuse off—about 250 feet, beside the
length of the hawser; I should judge it was not much odds of 1,000
feet there.

Q. How near was the Arnold to the east bank?

A. I cannot tell how far she was off.

Q. Was she over to the eastward?

A. Yes, sir; she was well over.

Q. Did you back your boat at all?

A. Not to my knowledge.

Q. You say she was the quickest-stopping boat you ever saw; in what space of a running distance will she stop?

A. It is according to what sheer she has got on her.

Q. Take two barges, just as she was that night.

A. If her bow was ight there, & you rang your bells, she would be stopped before she would get to [to] the other end of this court-room, with those two barges. If you tried to stop her you could do it in that distance.

Q. Without backing?

182 A. Oh, no; not without backing.

Q. I mean merely to slow and stop her—stopping her headway dead in the water. On that night, in what distance would she stop her headway?

A. I should think she would stop in about one quarter of a mile.

Q. Herr headway dead?

A. On less; yes, sir. I guess a little less than one quarter of a mile.

Q. How long did you stop at Athens for this vessel?

A. I cannot tell how long we were there; long enough to sing out to the men and to send the boat ashore and get a line to her.

Q. You didn't actually go up to the dock?

A. No, sir; we sent a small boat ashore with a line.

Q. Drew ithe boat up to you?

A. Yes, sir.

Q. How long that take you?

A. I don't know how long; I could not tell how long it did take; I
could not give any idea how long; sometimes it takes longer; if
183 you are pretty crowded it takes longer.

Q. Had you got below Merino Point when you went into the engine-room?

A. I don't know whether we were or not. I cannot tell. I didn't look when I went down to the engine-room where we were in particular, and had no occasion to look.

Q. You could tell?

A. I could tell if I noticed. I didn't notice how far we were down.

Q. Were you below it when you went down in the engine-room?

A. I think not.

Q. Opposite what point in the river where you when you went down in the engine-room?

A. I cannot tell you.

Q. Were you opposite the middle ground when you went down in the engine-room?

A. We were below the middle ground, I should think.

Q. How far below?

A. I could not tell.

Q. Had you got down opposite Merino Point?

184 A. I could not tell for certain. When I came out on deck, I
looked particularly where we were & I seen the Rip. I did not
know where we were before that, or what took place. I never paid any particular attention till after the bells rang to slow & stop.

Q. Wherever you were, you didn't see the Rip till you went in the engine-room?

A. No, sir.

185 Re-direct:

Q. Suppose the Rip Van Winkle had stopped and backed, would it have prevented the collision?

A. Why, certainly, it would. If both stopped there dead, they would not have hit one another.

Re-cross:

Q. How far off from you ought the Rip to have stopped to avoid the collision according to your judgement?

A. I don't know. She need not have stopped at all, if she had went far enough to the eastward. There was room enough.

Q. You think it would have been better judgement to keep on the course, but more to the eastward?

A. I don't know what my judgement would have been if I had been to the wheel. Sometimes a man gets so far that he cannot stop it; won't do no good to stop.

Re-direct:

Q. Are you in Mr. Austin's employ now?

A. I am not in Mr. Austin's employ since January 1st, and am not in any one's employ.

Smith Marshall sworn on behalf of claimants:

Examined by Mr. Benedict:

186 Were you on board of the Syracuse at the time of this collision?

A. Yes, sir.

Q. In what capacity?

A. I was pilot.

Q. Were you at the wheel?

A. Yes, sir.

Q. How much experience have you had on the river in steamboats?

A. Between 25 or 30 years.

Q. How much in steamboats?

A. Perhaps 17 or 18 years.

Q. In what capacity?

A. As pilot most of the time; part of the time as master.

Q. What boat have you been in?

A. Several different boats.

Q. How long have you been in the Syracuse?

A. I have on board of her 3 years.

Q. What sort of a boat is she to handle?

A. She is a good boat to handle as any steamboat can be expected to be of her dimensions. She steers well and handles her tow well.

Q. On the night in question, when did you first see the Rip Van Winkle "where away?"

A. I probably saw her lights as soon as she showed them; after she got above Catskill, around Roger's Island, I probably saw the lights of the steamer, but didn't think much of it at the time, being so far off. 187

Q. When you first noticed her?

A. I noticed her coming along up—a steamboat; and from her course of steering, I supposed she intended to go to the westward of us. We were in Purser's Reach.

Q. Was there room for her to pass to the westward?

A. I think there was, although a good deal the most room was to the east; but there would have been room for other steamboats to have gone to the west; still three quarters of the room was to the eastward.

Q. The Johnson was ahead of you?

A. She was ahead of us; I didn't notice the Johnson particularly then till I got down to the beach; I saw something ahead of hs that proved to be the Johnson.

Q. How near was she to the west bank of the channel?

A. She was considerably the best to the westward.

Q. About how far off from the channel bank?

A. Probably 150 feet in my judgement; you cannot tell as exact as we would in the daytime.

188 Q. There is no line in the channel by which you could see the channel?

A. No, sir; all we can go by is our experience and judgement.

Q. Is there any line between the bank and channel that you can see in the night-time?

A. No, sir.

Q. How far was you from the Joe Johnson when you first saw the Rip Van Winkle, when you thought she was heading to the west?

A. We were coming down to her; we were past her hawser tier; I supposed she was going to the west till she blew her whistle; I had no idea of her going to the east until she blew her whistle; and when she blew her whistle, that signified that she intended to take the other side.

Q. When she blew to the eastward, where was the Johnson at that time?

A. Probable 100 feet from the west bank.

Q. How far were you from her—did you lap her hawser tier there?

A. We were past her hawser tier and were just begining to lap her at that time.

Q. (By the court.) At what time was this that you were lapping her?

189 A. At the time the Rip blew her whistle.

Q. (By Mr. Benedict.) How far to the east were you?

A. I don't think over 20 feet at the outside; our barge on our starboard side, I don't think, was 20 feet to the eastward of the range of the Joe Johnson.

Q. Which was the furtherest ahead?

A. The bows of the Syracuse were the furtherest ahead.

Q. How much?

A. I should judge 15 feet in my judgement; I didn't measure it particularly.

Q. Did you answer the Rip's whistle?

A. I did.

Q. Did the Joe Johnson, too?

A. I heard her answer it.

Q. Answered it with one whistle?

A. Yes, sir.

Q. (By the court.) Did you answer it with one whistle?

A. Yes, sir.

Q. (By Mr. Benedict.) Had you lights on board?

A. Yes, sir; we had our usual signals that tow-boats carry.

Q. What did you do when you answered the whistle?

A. I stopped my steamboat immediately—I rang the bell to stop her, one bell to slow, and one to stop—I took right hold of the bell-wire and pulled them instantly.

190 Q. Did she stop?

A. She did stop; that I know.

Q. How far was the Rip off then when you stopped?

A. I judge she was in the neighborhood of a half a mile.

Q. She was there when you blew the whistle?

A. I stopped immediately.

Q. It took a little time to stop?

A. Very little; I didn't have to stop out of my track at all; but pulled the bell immediately; I rang the bell to stop the boat instantly after I blew the whistle.

Q. Then she was about half a mile from you?

A. I should judge so; it is guess-work in the night.

Q. When you stopped, did the Joe Johnson stop or go ahead?

A. She went on; I don't think she stopped; after we stopped, I seen she was pulling away from us immediately.

Q. Then she got a little away from you?

A. Yes, sir; she got a little away from us.

Q. Did you sheer to the eastward?

A. No, sir; when I stopped my steamboat, the heft of the barge naturally sheered her some to the westward, and I dared not sheer
191 her rank to the westward, for I should run on to the Johnson's hawser if I done so; we dropped a little astern of the Johnson the moment I stopped her; she was not going but a very little faster than the Johnson when we came down on her; her gait was very moderate.

Q. Did you see the Arnold.

A. I didn't notice the Arnold particularly only after the Rip had gone by us; I saw the Arnold go along up then. The Arnold yas below us in my estimation at the time of the collision. At the time of the collision the Arnold was not up to us at all.

Q. Look at that diagram. Is that the shape she was coming?

A. I should think that was the shape that she was coming.

Q. At the time of the collision?

A. Yes, sir. I should consider that about the shape of it.

Q. Do you think that (Exhibit C) is a fair plan of it?

A. I should think it was.

Q. Where did she strike you?

A. She didn't strike us at all; she struck the barge on our port side about 10 feet aft of the stem.

Q. Where did that hit the Rip?

192 A. I think it hit the Rip not far from her forward gangway.

Q. Suppose that instead of stopping your tow you had purted your wheel, what would have happened?

A. If I had hove it hard aport and had not stopped my steamboat at all, I should have run right on to the Johnson.

Q. Suppose instead of that you had starboarded your wheel and had not stopped her at all?

A. The consequences would have been, that the Rip Van Winkle would have been no Rip Van Winkle any longer; she would have been sunk immediately.

Q. You would have run right on to her?

A. Yes, sir; we could not help it in the position she crossed our bows. I done all I could, and that was to stop.

Q. Suppose the Rip, at the time she blew her whistle, had slowed and stopped?

A. She had plenty of time to stop and not touch us. I think the distance was enough after she blew her whistle; if they had stopped the steamboat, we would not have come together.

Q. Suppose at that time she had ported her wheel?

A. I think she had room enough to have gone clear of us. I
193 think there was plenty of room if he hove his wheel hard aport.

Q. If he kept it hard aport?

A. I think he had room enough to have gone all clear of us. I don't know what he done with his wheel.

Q. Suppose you ported your wheel at the time you blew the whistle and said you were going to the right, and had gone to the right?

A. I think there was plenty of room to get clear.

Q. Plenty of room to have cleared you?

A. Yes, sir; that is my judgment, that there was plenty of room.

Q. With reference to the middle of the channel—which side of the middle of the channel did this collision take place?

A. It took place to the westward of the middle of the channel, rather to the westward of the middle of the channel; we went to the eastward none at all; and we were best to the westward when they stopped her; she didn't go to the eastward any. The wind was blowing very fresh S. E., with the strenth of the flood tide at this time.

Q. When you speak of the southeast, what do you mean by the
194 southeast—by the compass, or by the river?

A. By the compass, and the course of the river would bring it right off the shore; S. E. wind is right off the shore through that reach.

Q. Do you know anything about the depth of the water on these flats along by the buoy?

A. There is not much water on the flats; you cannot go on the flats with any draught of water.

Q. You could not go on the flats at all?

A. Not a great deal, unless the tide was a ways up. You cannot get out of the channel a great deal with any draught of water.

Q. The Johnson could not go on the flats?

A. I should not want to go on the flats with her.

Q. Would there be water enough there for her?

A. There would be water enough perhaps, with a draught of water of five or six feet, a little on the flats, but not much.

Q. You saw the Arnold after the collision?

A. I saw her go by.

Q. Did you notice how far to the eastward of you she went?

195 A. I didn't notice particularly; I think she was well to the eastward; I don't think she was very near us at any time.

Q. Can you give any rough estimate of how near you think she might have come to you?

A. She might have been 6 or 7 hundred feet from us. I thought at the time when she went along up, she was well to the eastward.

Q. Could you see her plain?

A. I could see the lights on her hawser tier. Before the collision I didn't think much about it. She was down below us, coming along up, and I didn't hardly give her a thought, but I could see there was a boat going up there.

Q. How near to you could you see the hull of a boat that night?

A. It was not a dark night; a large steamboat of any size you could see quite a distance off. It is a hard matter to say what distance.

Q. How far could you have seen a sloop?

A. I could have seen a sloop half or three quarters of a mile off, and see that it was a sloop; I think that I could see the hull of a sloop a half a mile off. The night was not dark. I would not call it anything
196 of a dark night.

Q. After they got clear what became of you?

A. We were obliged to stop very soon, and our fender was broken and the barge's fender was broken and the barge was under our gaurd.

Q. Did you start your engine after the blow?

A. We did.

Q. How soon?

A. We started our engine wery soon.

Q. How soon?

A. I don't recollect just how soon; very soon after that we started it and worked away a little from the Johnson. She was pulling her hawser tier right down to us, and we started her up a little and stopped a number of times before we got our fender and got our barge all right.

Q. What was the size of the smoke-pipe?

A. We had no smoke-stack of any account. We lost it the trip before, on the passage up, in a thunder squall. The squall blew very heavy and blew it right down.

Q. Did that affect your vessel any?

A. Yes, sir; we could not carry half our usual head of steam at no time. We could not get it.

197 Q. How fast were you going?

A. I don't think we were going faster than three miles an hour.

Q. By the land?

A. I don't think we were.

Cross-examined by Mr. McMahon:

Q. How far off was the Rip when you first saw her?

A. When I first saw the steamboat's lights, she was probably two miles and a half off; I saw the steamboat's lights coming up. I think it is likely I saw her lights as quick as she opened around Roger's Island.

Q. How far was she off from you when she blew her whistle?

A. I judge we were about a mile; my impression was about a mile; it might have been a little more.

Q. Before she blew her whistle had you at any time sheered out to avoid the Johnson's hawser tier?

A. Not that I recollect of at all; I don't recollect that [that] the boat got any sheer on me at all.

Q. Are you possitive you did not?

A. I am quite possitive I did not.

Q. Didn't you talk about this collision next morning, or the day or two after it, with Captain Shook?

198 A. I don't recollect that I did. I saw Captain Shook in Albany.

Q. Did you have any conversation with him about the collision?

A. Yes, sir; we had some talk about it one day in Albany; that was along soon after the first of January.

Q. I am alluding to a conversation that took place before that.

A. I don't recollect ever speaking to him in regard to it before that.

Q. Who was on your vessel at that time on duty?

A. All our crew that we have were on duty at that time. I can tell you who that comprised.

Q. Tell us.

A. Myself as the pilot, the captain, one engineer, two firemen, and two deck-hands.

Q. (By the court.) On duty at the time of the collision?

A. The captain was, for we had just picked up a barge.

Q. Who were engaged on the deck at that time?

A. The captain, myself, one engineer, two firemen, and two deck-hands.

Q. (By Mr. McMahon.) How do you know two deck-hands were on duty?

199 A. We had use for them a very few minutes before that, picking up these barges and making them fast.

Q. How long before this collision had you seen these two deck-hands on duty?

A. I could not say just how long; perhaps 15 minutes. I could not say particularly how long.

Q. Where did you see them?

A. We were busy getting the barges fast; we saw them there getting their lines fixed.

Q. Where was that?

A. Down on the lower deck.

Q. Was there anybody with you in the pilot-house?

A. No, sir.

Q. You don't have any assistant, do you, on that boat?

A. No, sir; we never had any on tow-boats as long as I have been in the business.

Q. Did you see any person on the upper deck at all just before the collision?

A. I don't recollect particularly whether I did or not. I didn't pay much attention to it. I might have seen one and might not, but I didn't charge my mind with it.

Q. Didn't you tell Captain Shook that all hands were turned in?

A. No, sir; I never told him any such thing.

200 Q. Excepting the pilot, the engineer, and one fireman, and the captain?

A. No, sir; I never told him any such thing.

Q. What was the name of this barge on your port side?

A. Colgate.

Q. What was her tonnage?

A. That is more than I can tell you, what her tonnage was.

Q. What was the one of the other side?

A. Lewis Roberts was the name of the other barge.

Sebra Drake sworn of behalf of the claimants:

Examined by Mr. Benedict:

Q. Were you on board the Syracuse?

A. Yes, sir.

Q. What capacity?

A. 1st engineer.

Q. Was it your watch?

A. Yes, sir.

Q. You had charge of the engine?

A. Yes, sir.

Q. Did you hear the whistle?

A. Yes, sir; I heard one.

Q. From what boat?

A. I supposed it to be ours.

Q. That is the only one you heard?

A. Yes, sir.

201 Q. Did you see the Rip Van Winkle before the collision?

A. No, sir.

Q. Did you see the Joe Johnson before the collision?

A. I saw a boat they called the Joe Johnson.

Q. After the blowing of that whistle on board your boat, what did you do; what signals were given to you, if any?

A. The bell was rung immediately to slow her, and another to stop.

Q. Did you slow and stop?

A. Yes, sir.

Q. Instantly?

A. Instantly; as soon as ever I could.

Q. Did you look out at all?

A. I looked just out of the engine-room; I stood by the engine-room, and looked forward through the gangway.

Q. How would the smoke pipe affect your engine?

A. It affected our draft so as we could not carry the steam that we could, if we had had our whole smoke-pipe.

Q. How fast were you going this time?

A. I don't know; I could not say.

Q. Could you tell by the moving of your engine?

A. Before the engine was stopped?

Q. Yes, sir.

202 A. I don't know. I suppose we might have been going six miles an hour.

Q. Through the water?

A. By the land or through the water; that is guess-work for me, for I was inside.

Q. How long does it take to stop that boat; does she stop her way quick?

A. She stops very quick for a large boat.

Cross-examined by Mr. McMahon:

Q. You say you heard the whistle?

A. Yes, sir.

Q. How long after you heard the whistle before your boat answered it?

A. I only heard but one; I diden't hear but one.

Q. How soon, after your hearing that whistle, was it before the bells rung?

A. I could not say anything about that; it might have been three seconds, and it may have been more.

Q. How much steam did you have on?

A. The indicator showed 15 lbs. in the gauge.

Q. Do you reccollect the captain being in the engine-room?

A. Yes, sir.

Q. How long had he been in the engine-room before he went out?

A. Well, I would state a minute at the furtherest.

203 Re-direct:

Q. How much steam do you usually carry with a tall smoke-pipe and everything right?

A. We usually carry 20 or 25 pounds, varying from that.

Q. (By the court.) Did you reverse your engine at all?

A. No, sir.

John H. Coom sworn on behalf of claimants:

Examined by Mr. Benedict:

Q. How long have you been on the river?

A. About 20 years.

Q. What have you been about all that time?

A. Slooping most of the time.

Q. And the rest of the time?

A. On a barge.

Q. How long have you been on a barge?

A. Five seasons.

Q. How long have you been on this same barge?

A. One trip.

Q. Was she a new barge?

A. Yes, sir; a new barge.

Q. What barge was it?

A. Charles C. Colgate.

Q. Were you up looking about?

A. Yes, sir.

Q. You had been picked up at Athens?

A. Yes, sir.

204 Q. Which bow was the longest out—the Syracuse or your barge, the Colgate?

A. The Syracuse.

Q. About how much?

A. I should think it was 15 or 20 feet.

Q. When did you see the Rip Van Winkle first?

A. I seen her when she came up above Catskill.

Q. Which way did she seem to be heading then?

A. She was heading then to the northward.

Q. That is to your westward?

A. Yes, sir.

Q. Did you hear the whistle?

A. Yes, sir; I did.

Q. Your heard the whistle on the Syracuse?

A. On the barge.

Q. You were on the barge when you heard the whistle of the Syracuse?

A. Yes, sir.

Q. Did you hear the whistle of the Johnson?

A. Yes, sir.

Q. Did you hear the whistle of the Rip Van Winkle?

A. Yes, sir.

Q. Which was first?

A. The Rip Van Winkle.

Q. How near were you to the west bank at that time when you heard the whistle?

A. Well, I think about 400 feet from the west bank, as near as I could judge.

205 Q. (By the court.) Do you mean your barge or the Syracuse?

A. I mean the Syracuse.

Q. (By Mr. Benedict.) How near were you to the Joe Johnson?

A. Within 15 or 20 feet of her.

Q. That is of her line?

A. Yes, sir.

Q. Were you at the time of that whistle astern of her?

A. Astern of her.

Q. When you say 15 feet from her you mean 15 feet more to the eastward?

A. Yes, sir; of her course.

Q. What was done on board of the Syracuse as soon as the whistle was blown?

A. I heard a bell.

Q. Then what?

A. I heard another one right after it as soon as they could be pulled.

Q. Then what?

A. Then I seen the walking-beam stop.

Q. Then, what?

A. The Rip Van Winkle came up and came into us.

Q. Where did she hit you?

A. On my port bow.

Q. Where did it her [her]?

A. Somewhere near her gangway; forward somewhere.

206 Q. Did she strike the bows of the Syracuse at all?

A. No, sir.

Q. Nor the bows of the other barge?

A. No, sir.

Q. How far aft of your barge's stem did she hit you?

A. Ten feet.

Q. Ten feet from the bows of the stem?

A. Yes, sir.

Q. You measured it, did you?

A. Yes, sir.

Q. What was your condition at that time, lying still in the water or going ahead or going astern?

A. I think we were about dead in the water; we were not going very fast when they stopped the boat.

Q. Did you see the Arnold?

A. I seen a propeller to the eastward of us.

Q. Some distance to the eastward?

A. Yes, sir.

Q. How far?

A. Well, I could not tell. She was further down the river.

Q. She seemed to be which side of the middle of the river?

A. She was pretty well to the eastward.

Q. Did you see the Syracuse sheer to the eastward at all?
207 A. No, sir; I didn't see her go to the eastward at all.

Cross-examined by Mr. McMahon:

Q. Where were you?

A. I was forward on my barge.

Q. How long had you been forward on your barge?

A. I had been there probably 15 minutes.

Q. How long had you seen the Rip in sight?

A. I seen the Rip Van Winkle before I came off the upper deck.

Q. Then you saw her during that 15 minutes?

A. Yes, sir.

Q. Where did you come off the upper deck; where were you along the river?

A. I think I jumped off my upper deck somewhere about Athens shipyard.

Q. And you were 15 minutes coming from Athens ship-yard to the point or place of collision, were you?

A. I think we were.

Q. I understood you to say that you were 400 feet to the eastward of the channel bank.

A. To the westward of it.

Q. (By Mr. Benedict.) East of the west bank?

A. Yes, sir; that is right.

Q. (By Mr. McMahon.) Did you keep that distance from the west bank all the time?

A. I could not say.

Q. Did you notice your vessel sheering as you lapped on the
208 Johnson's hawser tier. Did you notice your vessel sheering out?
A. I noticed our vessel sheering to the westward, as they naturally would.

Q. When did you notice your vessel sheering to the westward?

A. Right away when she stopped.

Q. How far were you apart then—the Rip Van Winkle and you?

A. We were about three quarters of a mile apart at that time.

Q. Do I understand you to say you had come dead in the water; your way had been stopped dead in the water when you were three quarters of a mile off from the Rip Van Winkle?

A. No; I didn't say that.

Q. How far were you off from the Rip Van Winkle at the time your way was stopped?

A. She was not over 400 feet, I don't think, when her way was stopped.

Q. Off of which of your bows did you see the Rip Van Winkle?

A. I stood on my starboard bow.

Q. How did your vessel head with reference to the east bank?

A. Well, we were headed down the river, about the course we would
take through there—pretty well to the westward; heading pretty
209 well to the westward at the time we lapped on her.

Q. At the time you saw the Rip off your starboard bow, was your bow pointing then to the east channel bank?

A. No, sir.

Q. Was it pointing in that direction at all?

A. No, sir.

Q. It was pointing down the river, was it?

A. Yes, sir.

Q. Then you were pretty well in the middle of the river at that time.

A. No, sir; we were not. The best channel was to the eastward; the most of the channel. I think there was room enough on the other side of the Joe Johnson for the Rip to go through there, provided there was daylight to have done it.

Q. Were you not pretty well to the middle of the channel?

A. The most of the channel was to the eastward.

Q. I asked you whether you were or not pretty well in the middle of the channel?

A. No, sir; we were most to the westward.

Q. (By the court.) How far to the westward of the channel do you think you were?

A. About 100 feet.

210 Q. Would the Syracuse commence sheering to starboard as soon as the engine stopped or slowed? The heaviest barge was on the port side.

A. No, sir; then she would sheer to the westward, for the heavy barge would pull her along.

Q. (By Mr. McMahon.) What tonnage is this Colgate?

A. About 600 ton, I beleive.

Q. After leaving Athens, and before the whistle was blown, didn't you at any time change the direction of your vessel?

A. That I could not tell.

Q. In order to avoid the hawser tier of the Johnson?

A. I don't think we did, because I was to the wheel, but I didn't stir it.

Q. Had you got up to the hawser tier of the Johnson?

A. Yes, sir.

Q. When; at the time of the collision?

A. Yes, sir.

Q. Prior to that had you turned further into the river in order to avoid that hawser tier?

(The witness, by direction of the court, pointed out the angle at which the two vessels came together.)

211 Q. A very little porting of your helm would have sent your head off from her?

A. The wind was off to the eastward, and that made her swing that way. They kept a sagging off the head of the barge that way.

William A. Witherwax recalled:

Examined by Mr. Benedict:

Q. In whose employ are you now?

A. I am in Capt. Simmons's employ.

Q. He is capt. of the Rip Van Winkle?

A. He is the owner of the Rip Van Winkle.

Cross-examined by Mr. McMahon:

Q. The Rip is not under charter now to Mr. Hancox?

A. No, sir.

Q. (By Mr. Benedict.) Capt. Simmons was master of this vessel at the time of the collision?

A. Yes, sir.

Claimants rest.

James H. Shook sworn on behalf of libellants:

Examined by Mr. McMahon:

Q. What is your business?

A. Steamboating.

Q. How long?

A. Five years.

Q. Were you on the river that night?

212 A. Yes, sir.

Q. In charge of what vessel?

A. The American.

Q. Did you see the Syracuse that night?

A. Yes, sir.

Q. Where did you see her?

A. I saw her at Athens; down at the reach where the collision was; somewhere down there.

Q. How fast was she going when you saw her?

A. She was going considerably faster than we were.

Q. (By the court.) Which way were you going?

A. The same way she was going.

Q. (By Mr. McMahon.) How fast were you going?

A. We were going about four or five miles an hour; four and a half or five miles.

Q. And she was going faster than you?

A. Yes, sir.

Q. How much faster than you about?

A. She was going a third faster; we were together at Athens.

Q. Do you recollect having a conversation with Captain Lansing, of the Syracuse, about this collision?

A. Yes, sir.

Q. When was that?

A. In Jersey, the next day after the collision.

Q. Did you talk over the circumstances of this collision?

A. Yes, sir.

213 Q. What did Captain Lansing say on this subject, as to all hands being on deck or not?

A. He said that he was on deck, and that Smith was on deck.

Q. Did he say that all the rest had turned in?

A. No, sir.

Q. Who did he say was on duty?

A. The usual men. The engineer, he said, was up, and him and the pilot.

Q. Nobody else?

A. He didn't say.

Q. Did he say there was anybody on the barges?

A. No, sir.

Q. Did he say anything to this purport, that he had been behind the Johnson, and sheered out to pass her hawser tier; anything on that point?

A. Yes, sir; he said he followed her down and sheered out to pass her.

Q. That is, the Joe Johnson?

A. Yes, sir.

Q. Did he say that he could not break his sheer?

A. No, sir.

Q. He didn't say anything about that?

A. No, sir.

Q. What is the tonnage of the Roberts?

A. 400 tons, I think.

214 Abraham J. Post sworn of behalf of the libellants:

Examined by Mr. McMahone:

Q. Are you acquainted with Capt. Lamsing?

A. Yes, sir.

Q. Did you have any conversation with him about this collision?

A. I was going down to Baltimore last season—I forget exactly what time it was in the season, and I fell in with him; he was going down to Castletown, where he lived.

Q. New Baltimore?

A. New Baltimore, on the river. He said Capt. Hancox had libelled the Syracuse. Said I, "It is the first I knowed anything about it." So we were talking along, and says I, "Captain, what is the reason the 'captain' of that barge was discharged after the first trip; as soon as they got to New York." "Well," he said, "to tell you the truth, it was for not being on his duty."

Q. Captain Coom?

A. The captain of the barge, he didn't mention who the captain of the barge was.

Q. The captain of the Colgate?

A. Yes, sir; I said, You say they libelled the Syracuse; now, between
you and I, which one is to blame between the two boats. We
215 stood side by side on the City of Hudson, and he finally poked me
in the side and said, "Capt. Abe, the Syracuse ran into the Rip
Van Winkle; I saw the whole of it," he said; then some freinds of mine came along, and the conversation was dropped; and I never seen him from that day to this, till yesterday. That is all I know about it.

Q. Did he say anything in that co'versation about his having a sheer on her, and he could not break it?

A. He said she hauled out, or something to that purport. Said he, "The Syracuse ran into the Rip Van Winkle," and touched me in the side with his hand. That is all the conversation I ever had with him about it.

Q. Did you not just now say "Hauled out?"

A. I won't be positive whether he said "Haul out" or not; but he said she ran into the Rip Van Winkle.

Q. Did you have any talk with Mr. Marshall, first pilot?

A. No, sir; I never seen him before yesterday, from that day to this.

Joseph Teason recalled on behalf of the libellants:

Examined by Mr. McMahon:

Q. Did you have any conversation with Mr. Lansing about this collision?

216 A. Mr. Lansing came on board the boat, and inquired of me where
Capt. Hancox was. I told him he was not there. He asked me
where he could find him; and I said I didn't know. I asked him what he wanted with him, and he said he wanted to see him about the collision between the Rip Van Winkle and the Syracuse; that is about what he said. Said he, "We ran into the Rip." Said I, What are the circumstances? He said, You tell Cap. Hancox to come over to Jersey City and I will tell him all about it." Our conversation ended there; but he admitted the Syracuse ran into the Rip.

Q. What did he say about the rank sheer he could not break?

A. I don't recollect his saying anything about that; but he said the Syracuse ran into the Rip, and he knew why he done it, and he would tell Capt. Hancox. I think this was the 15th. I made a memorandum of it at the time.

(Objected to.)

Cross-examined by Mr. Benedict:

Q. You know Mr. Dalzell?

A. Yes, sir.

Q. Did you ever have any conversation with him in relation to this collision?

217 A. I don't know that I ever did. The first I saw of him after this accident happened, was three or four days afterwards, up to Albany. He asked me what the circumstances were, and I don't reccollect of giving him any information whatever about it. I asked him what he was doing ashore; and he said he had hired with Captain Austin, and when he sent for him he was ready to go to work, but he had not been sent for yet.

Q. When he asked you how it happened, didn't you say, "George, I don't know; the first thing I knew I was on top of the tow?"

A. If he swore to that, he swore to a lie.

Q. You didn't say such a thing?

A. No, sir; I didn't, nor never uttered them words to a living man; and the man who will swear to that will swear to anything. I told him just what I told you, and no further.

Libellants rest.

George K. Dalzrell sworn on behalf of claimants:

Examined by Mr. Benedict:

Q. Do you recollect a conversation with Mr Teason in relation to this collision that took place?

A. I do.

218 Q. Do you reccollect asking him how it happened?

A. Yes, sir; I will go on and state how it happened, if you say so.

Q. Go on and state it.

A. The morning after it happened, (I had not been called away on duty yet,) I went up to the railroad dock, perhaps a quater of a mile above the village where I live, to see the Rip. I went on board and saw Mr. Teason, and, being acquainted with him, passed the time of day. I said to him, Mr. Teason, how did this happen? He tapped me on the shoulder this way, and said, "I don't know; the first thing I knew I was on top of the tow" He made a remark like this: Says he, "I made up my mind that the hardest fend off." I didn't know at the time that this was one of Capt. Austin's boats. To be sure I was hired to go in one of his boats, but diden't know in what one, and being neighbors I asked him the question. I asked the man who superintends the ice business at Athens also, being well acquainted with him. I did hear a conversation on the dock below that same afternoon, and I asked the question in the morning. I heard them talking about it, and I
219 thought it didn't agree with what Mr. Teason told me.

Q. In whose employ are you now?

A. Nobody's, sir.

Cross-examined by Mr. McMahon:

Q. Did you make any memorandum of this conversation?

A. I did not, "sir;" I didn't dream of ever hearing of it again.

Q. How long ago did this conversation take place?

A. The morning after the accident happened.

Q. How long ago is that?

A. I cannot tell; it was between three and four in the morning, and I was on his boat between 9 and 10 o'clock the same morning. She lay at the railroad dock at Athens.

Q. What month was it in?

A. I could not tell you to save my life.

Q. Could you tell the day of the month?

A. No; I cannot.

Q. Nor the day of the week?

A. I cannot.

Q. And yet you can tell the conversation.

A. Certainly; why can't I?

Q. When was it you went in Mr. Austin's employ?

A. I could not tell you for my life; I made no memorandum of the day, for I had hired for the season. I could not tell you if I was to die.

Q. When did you cease to be out of his employ?

220 A. When all the rest of us quit; the last of December.

Q. Do you expect to go in his employ next season?

A. No; I don't know where I am going.

Q. How did Capt. Austin hear you knew of this?

A. The man who superintended the ice business.

Q. (By Mr. Benedict.) Did you volunteer this?

A. No, sir.

Philip Lansing recalled on behalf of claimants:

Examined by Mr. Benedict:

Q. Did you tell Mr. Post that the Syracuse had ran into the Rip?

A. No, sir.

Q. You heard what he said here?

A. Yes, sir.

Q. He is mistaken about it?

A. I don't know whether he is mistaken or not; he may have done it on purpose; Mr. Post may do it on purpose; he may not be mistaken; I don't know whether he is or not.

Cross-examined by Mr. McMahon:

Q. Did you ever have any conversation with Captain Hancox relative to this matter?

A. Yes, sir.

(Testimony closed.)

Adjourned to February 2rd, 1867.

221 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Thursday, the 18 day of July, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable W. D. Shipman, district judge.

JOSEPH W. HANCOX
vs.
THE ST'B'T SYRACUSE, HER TACKLE, &c. }

This case having been heard on the pleadings & proofs, and argued & submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libellant recover in this action ag'st the steamboat Syracuse, her tackle, &c., the damages by him sustained by reason of the collision in the pleadings mentioned; and that it be referred to a commission of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

W. D. SHIPMAN, *Judge.*

222 (Indorsed:) Vol. . No. . United States district court for the southern district of New York. vs. . , proctor for . Decree.
Filed the 19th day of July, 1867.

223 Dist. court of the U. S. for the south. dist. of N. Y.

JOSEPH W. HANCOX, lib'l'nt,
v.
THE S'TB'T SYRACUSE, HER tackle, &c., resp'd's.
Com's report.

In pursuance of a decretal order made in the above cause on the 18 day of July, in the year of our Lord 1867, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for damages sustained by reason of the collision in the pleadings mentioned, and to report thereon to this court with all convenient speed:

I, John A. Osborn, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the respective parties, and have taken and examined the testimony offered in
224 support of the libellant's claim for damages aforesaid, and do find
that there is due to the libellant for such damages, by reason of the collision before mentioned, the sums following, to wit:

For repairs	$3,576 33
Loss of baggage	1,150 82
Board of officers & crew of "Rip Van Winkle" and "Hero," at Athens, as per bills; Ex. "B" & No. "4"	193 67
Wages of officers & crew remaining in the Rip Van Winkle while being repaired	302 78
Loss of coal	43 50
Loss of groceries, teas, &c	50 00
Charter-money, $90 per day, from May 15 to June 4, at noon, excluding Sundays, 16½ days	1,485 00
	$6,802 10

Making in all the sum of six thousand eight hundred and two dollars and ten cents.

Add interest thereon from July 4, 1866, to Dec'r 14, 1867, making 1 year, 6 months, & 10 days	687 76
Sum total reported	$7,489 86

225 Dated Dec. 14, 1867.
All which is respectfully submitted.

JOHN A. OSBORN,
U. S. Com'r.

D. & T. MCMAHON, *Pr. for Lib'l'nt.*

Endorsed: Vol. 20. No. 70. Joseph W. Hancock, lib'l't, vs. the st'b't Syracuse, her tackle, &c., resp'd't. D. & T. McMahon, pr. for lib'l'nt. Commissioner's report.

Filed the 17 day of Dec., 1867.

226

228 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Thursday, the 2 day of Jan'y, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Sam'l Blatchford, district judge.

Joseph W. Hancox
v.
The st'boat Syracuse, her tackle, &c.

The time to file exceptions to the com's report herein having expired, and no exceptions having been filed, on reading and filing the report of John A. Osborn, United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages by collision with interest thereon, the sum of seven thousand four hundred and eighty-nine $\frac{86}{100}$ dollars, on motion of D. & T. McMahon, proctor for the libellant, it is ordered that the report be in all things confirmed, and that the libellant recover in this action against the st'b't Syracuse, her tackle, &c., the amount reported due, together with his costs to be taxed, and that said st'boat, &c., be condemned therefor.

And on like motion, it is further ordered, that out of the proceeds of the of the cl'm'ts for costs & value when paid into the registry of the court, the clerk of this court pay to the libelant or his proctors the amount reported due, together with his taxed costs.

And, on like motion of D. & T. McMahon, proctors for the libellant, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the clerk, after deducting the tax and costs of the officers of court, destribute the proceeds in satisfaction of this decree.

SAM'L BLATCHFORD.

229 (Endorsed:) Vol. . No. . United States district court for the southern district of New York. vs. ., proctor for libel't. Final decree in rem. on confirmation of commissioner's report.

Filed and entered the 2d day of Jan'y, 1868.

230 U. S. dist. court.

The st'b't Syracuse
ads.
Joseph W. Hancox.

Gentl.: Please take notice that the claimants intend to appeal in the above cause from the decree entered herein to the U. S. circuit court.

Jan'y 17, 1868.

Yours, &c.,

BENEDICT, TRACY & BENEDICT,
Cl'm'ts Proctors.

To D. & T. McMahon, Esq., *Lib'l's Proctors.*
Geo. T. Betts, Esq., *Cl'k.*

Endorsed: U. S. dist. court. The st'b't Syracuse, &c., ads. Joseph W. Hancox. Notice of appeal. Benedict, Tracy & Benedict, app'l'nt's proctors, 76 Wall st.
Filed Ja'y 17, 1868.

231

232 Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOSEPH W. HANCOX, lib'l'nt & appellee,
vs.
THE ST'B'T SYRACUSE, HER TACKLE, &c., the Albany & Canal Line, cl'm'ts & app'l'nts.
} Bond for costs.

Know all men by these presents, that we, Stephen G. Wood, Jeremiah J. Austin, & the Albany & Canal Line, cl'm'ts & appellants, are held and firmly bound unto the above-named libellant & appellee, in the sum of sixteen thousand dollars to be paid to the said lib'l'nt & appellee; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 25th day of Ja'y, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named cl'm'ts & app'l'nts have prosecuted an appeal to the circuit court of the United States for the south'n dist. of New York, in the 2d circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the south'n district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ALBANY & CANAL LINE,
℔ ALFRED D. HOYT, *Agt.* [L. S.]
STEPHEN G. WOOD. [L. S.]
JEREMIAH J. AUSTIN. [L. S.]

Sealed and delivered, and taken and acknowledged, this 25 day of Ja'y, 1868, before me.

JOHN A. OSBORN, *U. S. Com.*

& as to J. J. Austin, this 1st F'y, 1868.

J. A. OSBORN, *U. S. Com.*

233 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Stephen G. Wood, being duly sworn, doth depose and say that he is a resident of the city of New York; that he is worth the sum of sixteen thousand dollars over and above all his just debts and liabilities.

STEPHEN G. WOOD.

Sworn to this 25th day of Ja'y, A. D. 1868, before me.

JOHN A. OSBORN, *U. S. Com.*

SOUTHERN DIST. OF NEW YORK, *ss:*

Jeremiah J. Austin, being duly sworn, says that he is a resident of the city of Albany & State of New York, & is worth the sum of thirty-two thousand dollars over & above all his just debts & liabilities.

JEREMIAH J. AUSTIN.

Sworn to this 1st day of F'y, 1868, before me.

JOHN A. OSBORN, *U. S. Com.*

(Indorsed:) Vol. . Page . U. S. circuit court. vs.
. Bond for costs on . proctor.
Filed this 1st day of Feb'y, 1868.

Approved. Fe'y 1, 1868.

D. & T. MCMAHON.

234 U. S. circuit court.

JOSEPH W. HANCOX, appellee,
v.
THE ST'B'T SYRACUSE, &c., cl'm'ts & appellants. } Aff't of service.

SOUTH'N DIST. OF NEW YORK, *ss:*

William Addy, of the said district, being duly sworn, doth depose and say that he did, on the 31st day of January, in the year 1868, serve D. & T. McMahon, esq., appellee's proctors in the above-entitled action, with the appeal in this case, by delivering the same to T. McMahon, esq., a member of the said firm, personally.

(Signed) WILLIAM ADDY.

Sworn to before me this 31st day of Jan'y, 1866.

W. D. JONES,
Not'y Public N. Y. Co.

235

236 U. S. circuit court.

THE STEAMBOAT SYRACUSE, HER TACKLE, &c.,
the Albany & Canal line, cl'm'ts & app'l'nts,
ads.
JOSEPH W. HANCOX, lib'l'nt & appellee. }

To the honorable the circuit court of the United States for the south'n dist. of New York, in the 2d circuit:

The appeal of the above-named appellants respectfully shows that on or about the 17 day of July, 1866, the above-named libellant exhibited his libel in the district court of the United States for the southern dist. of New York, ag'st the above-named steamboat Syracuse, her tackle, &c., claiming over fifty dollars, and praying, among other things, that said vessel might be sold to pay the libellant's claim and costs.

That the claimants thereupon appeared and gave bonds for said vessel, and she was discharged from custody. That thereafter, and
237 on or about the 17th day of November, 1866, the appellants duly filed their answer to said libel, praying that said libel be dismissed with costs in that behalf, as by reference thereto will more fully appear.

That said cause thereafter, and on or about the 22 & 23d days of January, and the 16th day of Feb'y, 1867, came on to be tried before the Hon. Wm. D. Shipman, judge of the district court of the United States, upon the depositions and proofs taken in said cause, and the said judge having advised thereon, on or about the 16th day of July, 1867, made a decree in said cause, whereby it was ordered and decreed that the libellant in said cause recover of said vessel the damages by him sustained, and that it be referred to a commissioner of this court to ascertain and report to the court the amount of such damages.

That such proceedings were thereupon taken in said cause that, by the final decree of the court made herein, on or about the 2d day of
238 January, 1868, it was adjudged and decreed that the libellant recover of the said steamboat the sum of seven thousand four hundred and eighty-nine $\frac{86}{100}$ dollars, together with his costs to be taxed.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as the libellant was not entitled to recover any sum whatever in said action, and said libel should have been dismissed. And these appellants for these, and other reasons, appeal from the whole of said decree in favor of said libellant to the next circuit court to be held in said district, and on the said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court.

And they pray that the record and proceedings may be returned to the said circuit court, and that said decree may be reversed, and the said libel dismissed, and the libellants and appellees compelled to
239 pay to the appellants their costs in the premises.

BENEDICT, TRACY & BENEDICT,
Cl'm'ts & App'l'ts' Proctors.
E. C. BENEDICT, *Advocate.*

(Endorsed :) U. S. cir. court. The st'b't Syracuse, &c., ads. Joseph W. Hancox. Appeal & aff't of service. Benedict, Tracy, & Benedict, cl'm'ts' proctors.

Filed July 31, 1868.

242 UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-eight, I, Kenneth G. White, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and caused to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Fancis Teson, to testify and the truth to say on the part and behalf of the appellants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district aforesaid, wherein the steamboat "Syracuse," is appellant, and J. W. Hancock is appellee; and the said Francis Teson being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Francis Teson, and he did thereupon depose, testify, and say as follows, viz:

Q. Were you examined as a witness in the trial of this cause in the dist. court?

A. Yes.

Q. Before the commencement of that suit, did you go to the office of Beebe, Dean & Donohue in relation to the suit?

A. I did. Mat. Hancock and I went there together. Mathew Hancock went there to empl'y them—he is J. W. Hancock's son.

Q. Who did you see of the firm?

A. A man said to be Mr. Donohue.

Q. Did you talk over the facts of the collision with him?

A. He asked us some questions about it, which I answered.

243

244 Q. You have said that Mathew Hancock went there to employ them. Did he employ them to bring a suit?

A. No, sir.

Q. Why not?

(Obj. to.)

A. The reason why he did not employ them was that he wanted to know all about the affair. I stated the case to him just exactly as it was and just as I stated it in court. Well, we talked the matter over; he asked several questions about the lights, course, &c., and then he give us to understand he did not want anything to do with it; so we got up, went out, and left him.

Q. Did you understand why he did not want to have anything to do with it?

(Obj. to.)

A. I can't say that I do understand why he did not have anything to do with it.

Q. Do you recollect being asked in that conversation wether you saw the "Syracuse" sheer?

(Obj. to on the ground that whatever conversation took place
245 between the witness on that occasion, Mr. Donahue is privileged, because of the proposed relation of consul and client.)

A. I was asked, and told him I did.

(The last part of the answer obj't. to by appellant's proctor as not responsive.)

Q. Did you not in answer to that question say that she must have sheered, or words to that effect?

A. No, sir; she did sheer.

Q. Do you not recollect that you were told in the conversation that it was no use to bring a suit, unless you could testify that you saw the sheer?

A. I don't recollect of any such question as that being asked.

Q. Do you not recollect that the reason why Mr. Donahue was not obtained to bring the suit, was because he advised that, on the facts as stated to him, the suit would not be successful, or words to that effect?

(Obj. to as being privileged, from the relation of consul and
246 client—as being entirely immaterial.)

A. Mr. Donahue says I would not advise you to libel the vessel, from what you have said. Matt. Hancock then asked him if he would take it in hand; when Mr. Donahue replied he did not want it, or could not attend to it, or something like that.

Q. Did you not understand that when he said he would not advise you to libel the vessel, it was because the facts, as you had stated, were such as to show that the Rip Van Winkle ought not to recover in the suit?

A. No; I did not understand any such thing.

Q. Don't you recollect that Mr. Donahue said that unless you could testify that you saw the Syracuse sheer, it was of no use to file the libel, or words to that effect.

(Obj. to because of the ground aforesaid.)

A. He asked me that question, and I told him she did sheer, and showed him how she did sheer.

Q. Question repeated.

(Obj. to.)

A. I could not say positively wether he did or not. I know that he
said something about it, but what it was I don't recollect.
247 He asked me if she did sheer, and I said she did.

248 Q. Was it after you answered that, that he said he wouldn't
advise you to libel the vessel?

A. I could not say wether it was before or after he asked me about the sheering that he wouldn't advise us to libel.

Q. Did you understand that there was any other reason for his advising against the libel, except that he thought the libel wouldn't be successful on the facts as you stated?

A. I did not understand it.

Q. But you did understand, did you not, that he thought a libel would not succeed?

(Obj. to as irrevalent.)

A. Well, that is what he said.

Cross-examined by Mr. D. McMahon:

Q. You were taken to Mr. Donahue's office by Mr. Matt. Hancock, to explain the case, with a view to file a libel against the "Syracuse," were you not?

A. Yes, sir.

Q. Mr. Matt. Hancock went there, on behalf of J. W. Hancock, to employ Mr. Donohue as consul in the case, did he not?

A. Yes, sir.

Q. Were not all the conversation you and he had with Mr.
249 Donohue in that interview with reference to such employment
and the bringing of a suit?

A. That is all we had.

Q. Was not Mr. Donahue very busy at the time, and were you not interrupted a good deal by people coming in and out?

A. No; there was nobody in the room but us three; but he told he had a case with some ocean or sound steamers, where they had a collision suit.

Q. Did Mr. Donahue appear to you to comprehend your statement of the case of the collision between the "Syracuse" and "Rip Van Winkle?"

(Obj. to.)

A. I could not tell. I thought he didn't, otherwise he would have brought the suit.

Q. How long did the interview last between you?

A. Five to seven minutes—less than ten minutes.

Q. Did Mr. Donahue take down in writing your statement of the case?

250 A. Not a word.

Q. Did he take the map of the Hudson River in the vicinity of the collision, and trace out courses of the respective vessels?

A. No, sir.

Q. Did he make any diagram or ask you to do so before him in the courses and bearings of the respective vessels?

A. No, sir; all he asked me, if I saw the vessel sheer, and I told him she did, and showed him how.

Q. Did he examine any of the other witnesses introduced by the libellant on the trial in the dis'ct court in that interview?

A. No, sir.

Q. Had he seen or did he request to see the other witnessess?

A. No, sir.

Re-direct:

Q. You say you thought Mr. Donahue did not comprehend the 251 case as you stated it. What part of the case do you think he failed to comprehend?

A. I think he failed to comprehend anything about it; he did not ask me what part of the river it took place, or did not ask me about the other tow, so as to show why the [the] sheer took place.

F. TESON.

Sworn to before me this 23rd day of May, 1868.

KENNETH G. WHITE,
U. S. Commissioner.

Adj. until Monday, May 25th, 1'68.

252 UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered that on this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, I, Kenneth G. White, a commissioner duly appointed by the circuit court of the United States for the southern disteict of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office, at the United States Court Building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles Donahue, to testify and the truth to say, on the part and behalf of the appellants in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States, for the at , in the district aforesaid, wherein Joseph W. Hancock, libellant v. The st'boat Syracuse, her tackle &c., cl'm'ts and appellants. And the said Charles Donahue, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said , and he did thereupon depose, testify, and say as follows, viz:

I am an attorny and counsellor-at-law in N. Y. city, and a member of the former firm of Beebe, Dean and Donahue; I know Frank Teason.

Q. Did you have any conversation with him as to the circumstances of the collision between the Syracuse and the Rip Van Winkle mentioned in the pleading in this suit?

(Obj. on the ground that any conversation was had between Mr Donahue and Frank Teason was so had in his capacity as consul adviseing about a suit intended to be brought by the libellant ag'st 253 the "Syracuse;" and, on the part of the libellant, object of the witness disclosing any such communication, and on the further ground that it would be evident tending to discredit their own witness called on the appeal.)

A. The witness would prefer to have the point settled by the court before answering the question.

Adj. till May 27 at 12 m., on which day the point referred was heard before his honor Mr. Justice Nelson, who, after argument of consul, sustained the objection on both grounds. Appellants' consul excepts.

C. DONAHUE.

Sworn to before me this 25th day of May, 1868.

KENNETH G. WHITE,
U. S. Commissioner.

254 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is,and the fact is, the witness material and necessary in the cause in the caption of the said deposition named, and that he

I further certify that a notification of the time and place of taking the said deposition signed by me, was made out and served on the counsel for appellee, to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit

I further certify that on the 23rd, 25th, & 27th day of May, in the year of our Lord one thousand eight hundred and sixty-eight, I was attended by proctors for respective parties, and by the witness, who are of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses, and from their statement, and after carefully reading the same to the witnesses was subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of mailing the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this 27th day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the

KENNETH G. WHITE,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

255 (Indorsed:) Vol. . Page . United States court for the district of
Deposition on the part of the taken before ,
United States commissioner, on the day of , 18 .
Filed the day of , 18 .

256 U. S. circuit court.

JOSEPH W. HANCOX, libellant & appellee,
vs.
THE STEAMBOAT SYRACUSE, HER TACKLE, &c.

We hereby consent that John W. Shook and Mull be examined as witnesses on the part of the claimants and appellants in this cause, on Tuesday, the 27th day of October, 1868, at 3 o'clock in the afternoon, at the office of Messrs. D. & T. McMahon, 13 Chambers street, in the city of New York; that the examination may be sworn to before a notary public, and that the same, so taken and sworn to, may be used and read in evidence on the trial of this action in the same manner and with the same effect as if duly taken, de bene esse, pursuant to the statute, subject, however, to any objections to the competency and relevancy of the testimony.

Dated New York, October 24, 1868.

D. & T. McMAHON,
Proctors Libellant & Appellee.

257

258 U. S. circuit court, southern district.

JOSEPH W. HANCOX
vs.
THE STEAMBOAT SYRACUSE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John W. Shook, of Saratoga, boatman, being sworn, says that he is now master of the steamboat Syracuse, and has been so three months, and before that was pilot between four and five months, and as pilot steered her constantly, running between here and Albany. She is a good-steering boat—steers easy—minds her helm easy. I have steered her with a heavy tow on one side and a light one on the other; I could manage her well enough; she would be the heaviest a little on one side.

Suppose she had a heavy-loaded barge on one side and a partly-loaded barge on the other, and no other tow; state whether there would be any difficulty in steering her.

No, sir.

259 Can you state whether it takes more than one man to handle her?

It does not; in shoal water we might want two, and when she is alone about the harbor where we want to handle her quick; not to say but one can steer her there.

With such a tow as I enquired about; that is, a heavy barge on one side and a light one on the other, would there be any difficulty in breaking her sheer?

I should think not.

Cross-examined:

Q. Do I understand you to say that you are now in the employ of the owners of the Syracuse?

A. Yes, sir.

Q. Were you employed on board of the Syracuse at the time of this collision?

A. No, sir.

Q. On what boat were you then engaged?

A. The America.

260 Q. When did you first become employed on the Syracuse?

A. Last March.

Q. Your experience then, with regard to her steering qualities, has been acquired since March last?

A. Yes, sir.

Q. Do you know of your own knowledge whether or not, since May or June, 1866, anything has been done on the Syracuse in the way of altering or improving her steering apparatus or her machinery?

A. No, sir.

Q. Did you, during the time you have been on board, ever have charge of the wheel of the Syracuse when she had a heavy barge on her port side, and another barge of half the weight on the starboard side and no tow astern?

A. I don't know as I have with one loaded barge on one side and a light one on the other; but I have had one loaded barge on one side and no boat on the other side of her.

261 Q. In the latter case has there been any tow astern of you?

A. No, sir.

Q. How long an experience have you had of her steering qualities as her pilot?

A. About five months as pilot.

Q. She is a boat possessing a powerful engine?

A. Yes, sir.

Q. How many boats have you ever known her to have in tow at one time? Give the utmost.

A. 43 boats.

Q. State what kind of boats.

A. Canal boats and barges and most of the canal boats.

Q. Laden with what?

A. Merchandize, coal, and other cargo.

Q. Were these boats astern or on her side?

A. Most of them astern.

Q. You say that when you want to move her quick about the harbor you sometimes have two at her wheel. State what you mean by that.

262 A. If you want to turn her round short, she has a very big rudder, and if you are going fast one man can't heave her a great ways over to turn her quick.

Q. Is that difficulty increased when she has a heavily-loaded barge one side and a light one on the other?

A. She would sheer harder wherever she had the heavy boat. If she was running open and let her get a sheer she would stop harder.

Q. Suppose she had a sheer on her in the direction of port and had on her port side a heavily-loaded barge and a light one on the starboard side; what do I understand you to mean would be her inclination?

A. To go to port if you do not heave her wheel and stop her.

Q. To do that quickly would require, if she was going fast, two men at her wheel, would it not?

A. Yes; to do it quickly; if they did not slow her.

263 Q. Suppose at the same time, she having a sheer to port, there being on her port side a heavily-loaded barge and on her starboard side a light barge, you backed her; what would be the effect on her direction?

A. She would cant to starboard.

Q. When? As soon as he was backed?

A. As soon as her wheel stopped that barge would cant her to starboard.

Q. But up to the time her wheel stopped what would be her direction, she having commenced with a sheer to port?

A. By slowing her it would lessen her sheer, but it would still be in the direction of port.

Q. Suppose they did not slow her, how soon could her sheer be broken with only one man at the wheel, having a heavily-loaded barge on her port side and a light one on her starboard side, and no tow astern, and going six miles an hour, commencing with a sheer to port?

A. One man could handle her very easily at 6 miles an hour.

Q. Repeated.

264 A. I could not tell; if he tried to stop her he could not go far if he tried to stop her.

Q. Suppose she was going eight miles an hour, how soon could you break her sheer, with one man at her wheel?

A. It would not take much to break her sheer; but if you gave her a rank sheer she would go some ways before you could do it.

Direct resumed:

Suppose she was going six miles an hour, with one man at the wheel, with one loaded barge, and one partly loaded on the other side, with a sheer towards the loaded side, in how many times her length could he break her sheer?

Before she went a length.

You stated that you have steered her with one loaded barge on one side and none the other. Did you have any difficulty in steering her then?

No, sir.

Re-cross:

265 Suppose she was going six or seven miles an hour with one man at her wheel, with a heavily-loaded ice-barge on her port side, and a light-loaded barge of half the size on the starboard side, and she had taken a rank sheer to port, in how many times her length could you break her sheer with the one man?

A. She might go two lengths.

Q. To break that rank sheer, what would have to be done by one man?

A. If he want to do it quick, to stop her, heave his wheel over to port as soon as she was stopped, and her wheel over to port she would go very fast.

Q. Suppose you want to do it as quick as possible, what must the one man do in case of a rank sheer?

A. Stop her.

Q. Suppose you back her?

A. Suppose you go 7 or 8 miles an hour, and you stop and back her all at once, the barges would go all round her, nothing could hold them. She stops very dead as soon as her wheels are stopped.

266 Q. How long is she?

A. 220 or 230 feet, or thereabouts. I don't know exactly what her length is.

Further direct:

You were asked, Suppose you wanted to do it as quick as possible, what must the one man do in case of a rank sheer? And you answered, Stop her. Did you mean that he could do it quicker by stopping her than he could by stopping and also putting his wheel over?

The wheel would help stop her also.

J. W. SHOOK.

Sworn to before me this 27 day of October, 1868.

KENNETH G. WHITE,
U. S. Commissioner.

267

268

269 Indorsed: U. S. circuit court. Joseph W. Hancox, lib't & appellee, vs. the steamboat Syracuse, &c. Copy. Deposition of John W. Shook.

270 U. S. circuit court.

HANCOX
vs.
THE STEAMBOAT SYRACUSE.

A. De Hoyt, being duly sworn as a witness for the appellees herein, says:

I am agent for Austin's Towing Line; the Syracuse belongs to that line. I have been such agent since the spring of 1858. I recollect the time of this collision between the Syracuse and the Rip Van Winkle. I have been familiar with the Syracuse since then.

There has been no alteration in her steering gear or her rudder since then; it has been repaired a little, but no changes have been made in it.

Cross-examined:

I am not a steamboat pilot, although I handled a steamboat for one year; I am not a ship-carpenter by occupation. During 1866 I made no special or particular examination of the rudder & steering apparatus of the Syracuse. I can't tell you the size in feet & inches of the rudder of the Syracuse, as I never measured it or seen it measured. Part
271 chains & part rods compose the steering chains on the rudder. I made no special examination of the rudder and steering gearing in 1868. The rudder was unshipped this past summer, (1868.) I saw some repairs put on it. I saw that the backing of the rudder was loose; we put some bolts through, and loose pieces of plank on each side to

sheath; they were spiked on. These were all the repairs, except a little grading piece put in the after end of the rudder. That rudder and steering gear had been used since the steamboat was built, before these repairs were made. The steamboat came out in 1857. I can't tell you how long prior to 1868 that rudder and steering gear had been repaired. It was unshipped one winter before & some repairs (some trifling thing) put on it. Can't tell when it was done within a year or two when it was done. I was agent, in 1866, of the line. He don't allow anybody to be agent of him (Mr. Austin.) Mr. Austin—I can't say he is a dictatorial man.

In 1866 how many men did you have acting as master of the Syracuse?

My impression there were two.

272 In 1866 how many men did the line have acting as pilot of the Syracuse?

A. I think she had two pilots. I can't answer as to the number of men who acted as pilot on her.

In 1866 how many men were employed to pilot the Syracuse during the whole season?

A. I can't tell you how many men steered her—nobody else could.

Q. Were the changes so frequent?

A. I don't mean that; I said I thought the men who started her in the commencement of the season continued on during it.

Q. Did you have any persons employed to navigate as pilots the Syracuse during 1866, other than two at a time?

A. No, sir.

Q. Of whom only one stands watch at a time?

A. I presume they take turns, watch and watch; but the pilots can answer that better than I can.

Q. Were there any wheelsmen hired to remain in the pilot-house of the Syracuse in 1866, assisting each pilot on his watch?

A. I don't hire any of the men; Mr. Austin hires the captain,
273 pilot, & engineer, and they employ their deck-hands and firemen;
I never heard of any wheelsman being hired for that special purpose.

ALFRED D. HOYT.

Sworn to before me this 31 day of Oct., 1868.

T. W. HANDLEY,
Notary Public N. Y. City.

274 U. S. circuit court.

HANCOX
vs.
THE STEAMER SYRACUSE.

Benjamin Mull, being duly sworn as a witness for the appellees herein, says:

I am a pilot on the North River. I have been pilot on sloops & steamboats altogether about 30 years. I have been pilot on steamboats six years. I am now pilot on the Syracuse; I have been pilot of her since the 16th day of July last. I have been pilot of the Telegraph last season; and I was four seasons on the J. T. Olyphant; and one season on the propellor Hiram Perry and the Union; part of the season on each; I was on the Annie five or six months. The Syracuse is a good-steering boat.

Q. Suppose you have a heavy boat on one side of her & a light one on the other, is there any difficulty in handling her with one man at her wheel?

A. No, sir; not if they watch her close & not let her get started.

275 Q. When she gets a sheer on her, is there any difficulty in breaking it more than on any other boat?

A. I have never had no difficulty in breaking a sheer on her.

Q. With a heavy barge on one side and a light one on the other, what is the effect on her, if her engine is stopped?

A. The heavy barge runs her around.

Cross-ex.:

Q. The Syracuse has a powerful engine, has she not?

A. Yes, sir.

Q. What is the greatest number of boats you have ever known her to take?

A. As many as 41; we had that on going up this last time, & 40 down; canal-boats, barges, &c.; all loaded coming down; might have been one or two light ones.

Q. You would call two barges a light tow for her?

A. Yes, sir.

Q. How fast could she go with such a tow, putting on all her power?

A. I have not been aboard of her at any time when she had two barges in tow, on the passage down.

Q. She has a large, powerful rudder & steering apparatus?

276 A. Yes, sir.

Q. You could not tell how she would act coming down with two barges, one on each side, never having tried it, have you?

A. No, sir; I never steered her with two loaded barges.

Re-direct:

Q. Could you tell how she would act going up with two barges, one on each side?

A. She steered well—I steered her six hours going up, & had no difficulty with her.

Re-cross:

Q. Were those barges light going up?

A. Yes, sir.

BENJAMIN MULL.

Sworn to before me this 31st Oct., 1868.

JOHN A. OSBORN, *U. S. Com'r.*

277

278 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on Wednesday, the 12th day of November, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, he Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOSEPH W. HANCOX, libellant & appellee,
vs.
THE ST'BOAT SYRACUSE, HER TACKLE, &c., the Albany and Canal Line, cl'm'ts & appel'ts.

The appeal in this cause from the decree of the district court coming on to be heard, Mr. D. McMahon reads the testimony from the apostles, and is heard on the part of the libellant and appellant.

Mr. R. Benedict reads testimony from the apostles, and is heard on the part of the claimant and appellees.

Mr. D. McMahon is heard in reply.

Cur. adv. vult.

279

280 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on Tuesday, the 24th of day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Samuel Nelson, an associate justice of the U. S. Sup. Court.

JOSEPH W. HANCOX
ad.
THE STEAMBOAT SYRACUSE, HER TACKLE, &c.

The appeal in this case, from the decree of the district court herein, coming on to be heard, being argued by counsel for the respective parties, and due deliberation being had:

Now, on motion of Benedict & Benedict, proctors for the claimants and appellees herein, it is ordered that the decree of the district court herein be in all things reversed, and that the libel in this case be dismissed with costs.

And it is further ordered that the Albany and Canal Line, claimants of the steamer Syracuse, recover in this cause against Joseph W. Hancox, the libellant herein, the sum of three hundred and sixty dollars
281 and ninety-six cents, costs of the claimants in the district court, as taxed, together with the sum of two hundred and twenty-eight dollars and sixty-five cents, costs of the said claimants in this court, amounting in all to the sum of five hundred and eighty-nine dollars and sixty-one cents. And it is further ordered, that unless an appeal be taken this decree within the time prescribed by the rules and practice of this court, then that the said claimants and appellees have execution to satisfy this decree.

S. NELSON.

282 Circuit court of the United States for the southern district of New York, in the second circuit.

JOSEPH W. HANCOX, libellant,
vs.
THE STEAM-TUG SYRACUSE, ALBANY and Canal Line, claimants.

The appeal of Joseph W. Hancox, the libellant in the above-entitled action, respectfully sheweth: That on the fourteenth day of July, A. D. 1866, he, the above-named libellant, filed his libel in the district court of the United States for the southern district of New York, against the steam-tug Syracuse, her tackle, apparel, &c., in a cause, civil and maritime, for the recovery of damages sustained by him to the steamboat Rip Van Winkle, her tackle, engine, and machinery, by collision with the said steam-tug Syracuse, was arrested on process issued upon said libel; was

afterwards discharged upon the said claimants intervening in said action,
and filing their claim and answer, and entering into stipulations;
283 and afterwards such proceedings were had in said cause that, on
the second day of January, A. D. 1868, a final decree was made and pronounced therein by the said district court, wherein it was ordered, adjudged, and decreed that the libellant recover in said action the sum of seven thousand four hundred and eighty-nine $\frac{56}{100}$ dollars against the steam-tug Syracuse, her tackle, &c., being the amount reported due by the commissioner to whom had been referred inquiry as to the amount of damages, and also the costs of the libellant to be taxed, and that said steamboat be condemned therefor; and that, after such final decree, the said claimants duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court that afterwards, on the 27 day of November, A. D. 1868, the said circuit court made a final decree in the said cause, whereby it was decreed that the said
decree of the district court be in all things reversed, and the
284 libel dismissed with costs, and that the said claimants have
execution; which said decree of said circuit court is, as this libellant is advised, erroneous, and ought to be reversed. Wherefore this libellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed; and that the said decree made in the district court be in all things sustained and affirmed, and that this libellant may also recover his costs of this appeal, and also in the said circuit court; or such other decree as to the said Supreme Court shall seem just; and that this appellant may be restored to all things which he has lost by said decree.

285 Dated New York, November 25th, 1868.

J. W. HANCOX.

DENNIS MCMAHON,
13 *Chambers Street, N. Y.*, *Proctor for Libellant.*

286 Circuit court of the United States for the southern district of New York, in the second circuit.

JOSEPH W. HANCOX, libellant & appellant,
vs.
THE STEAM-TUG SYRACUSE, HER TACKLE and machinery; Albany and Canal Line, claimants.
} Bond for costs.

Know all men by these present, that we, Joseph W. Hancox, and Michael Murphy and Martin D. Hancox, are held and firmly bound unto the above-named claimants and appellees in the sum of fifteen hundred dollars to be paid to the said claimants; for the payment of which, well and truly to be made, we bind our and each of heirs, executors, and administrators, jointly and severally, firmly by these present.

Sealed with our seals, and dated the 25th day of November, A. D. 1868.

Whereas the above-named libellant has prosecuted an appeal to the Supreme Court of the United States, to be held at Washington, in the

District of Colombia, to reverse the decree rendered in the above-
287 entitled suit by the judge of the circuit court of the United States
for the southern district of New York, in the second circuit:

Now, therefore, the condition of this obligation is such, that if the above-named libellant shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. W. HANCOX.
MICHAEL MURPHY.
M. D. HANCOX.

Sealed and delivered in the presence of—
J. A. HARRIMAN.

Sealed and delivered, and taken and acknowledged, before me, this 25th day of November, 1868.

KENNETH G. WHITE,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Michael Murphy and M. D. Hancox, being duly sworn, do severally
dispose and say that he resides in the city of New York; is worth
288 the sum of fifteen hundred dollars over and above all his just
debts and liabilities.

MICHAEL MURPHY.
M. D. HANCOX.

Sworn to before me this 25th day of November, 1868.

KENNETH G. WHITE,
U. S. Commissioner.

289

290 By the Honorable , one of the judges of the
circuit court of the United States for the southern dist. of New
York to the Albany & Canal Line owners of the steamboat Syracuse:

Whereas, Joseph W. Hancox, libellant and appellant, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, second circuit, made in favor of you, the said Albany & Canal Line, owners of the steamboat Syracuse, against him, the said libellant and appellant, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the first Monday of Dec'r next, to shew cause, if any there be, why the said decree should not be reversed, and to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern dist. of New York, in the 2d circuit, the 25th day of Nov'r, 1868, and of the independence of the United States the ninety-third.

S. NELSON. [L. S.]

291 We hereby admit due service of the within citation, on the
27th day of Nov., 1868.

BENEDICT & BENEDICT,
Proctor for Clnt.

Endorsed: U. S. cir't court. Joseph W. Hancox, libel't and app'l'nt, vs. the steam-tug Syracuse, &c. Citation. Dennis McMahon, att'y for app'l'nt.

Filed Nov. 27, 1868.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 291, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Joseph W. Hancox against the st'boat Syracuse, her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 12th day of Dec., in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[SEAL.] KENNETH G. WHITE, *Clerk.*

○

…es,

…ted States of America,

Southern District of New York, ss.

…Kenneth G. White, clerk of the circuit court of the United States … for the southern district of New York, … do hereby certify that the foregoing papers contain … [illegible] complete transcript of the … [illegible] … in said court, in the case of Joseph [illegible] … [illegible], libellants, &c., as the same remains of record in said office.

…testimony whereof, I have caused the seal of the said … to be affixed, at the city of New York, in the said … [illegible], in the second circuit, this 17th day of … [illegible] … one thousand eight hundred and sixty … of the said United States the ninety …

[L.S.] KENNETH G. WHITE, …

IN ADMIRALTY.

SUPREME COURT OF THE U. S.

ON APPEAL FROM 2D CIRCUIT, S. D. OF NEW YORK.

JOSEPH W. HANCOX,
Libellant and Appellant,
vs.
THE STEAMSHIP SYRACUSE,
Appellee.

Appellant's
Brief on Summing
up.

STATEMENT.

The case of the libellant as developed in his libel and proofs is this, viz.:

The Rip Van Winkle running in his employment as a freight and passenger boat on the Hudson River, between New York and Troy, on the evening of the 15th of May, 1866, at six o'clock P. M., (fol. 54,) started from New York heavily laden (fol. 54,) bound for Troy, and on the morning of the 16th, at about half-past one o'clock (fol. 53,) arrived in the usual course (fol. 56,) at a point on the river about opposite Brandon's Hollow (fol. 56.) There she whistled to two tugs approaching her along down the west bank of the channel. The Joe Johnson being the foremost tug, (fol. 80.) the Syracuse behind the Johnson's tier nearly on the same line (fol. 94,) but a little to her windward (fols. 57, 80.) This whistle was given when the two approaching tugs were one-half to three-fourths of a mile off (fol. 87.)

This was a single whistle given in the usual way (fol. 56,) which is the signal for each vessel so approaching to port their helms and to go to the right (fol. 57.) This whistle was answered by the approaching tugs (which answer meant they understood the signal and assented to it) (fol. 57.) Upon or about the time of the answering whistle, the Rip Van Winkle ported her helm (fol. 87,) and took the usual course, heading for the Hudson Foundry lights (fol. 73.)

On this morning her course was a little more easterly than that (fol. 73,) viz.: she headed for Marino Point (fols. 84, 85, 131, 102, 86, 90, 108, 136 and 141.)

At the time she blew her whistle the Rip Van Winkle could not go to the westward of the two approaching tugs, as they were so near the west channel bank, fifty to one hundred feet off (fols. 71 and 72,) nor could she go any nearer to the eastern bank of the channel than she did, as she would then have come in contact with a propeller called the Arnold (fol. 72.) with a hawser tier of four boats going in the same direction, which were hugging the eastern bank (fol. 72,) nor could the Rip, either before or after the sheer of the Syracuse, have gone to the westward of the Syracuse, (fol. 71, 103, 119, 122 The Rip Van Winkle on that course heading at about Marino Point (rather to the eastward of Hudson lights,) passed between the Joe Johnson and the propeller Arnold (between which two there was about 600 to 700 feet of channel space (fols. 134 and 139.) and about 300 feet to the eastward of the Johnson's course (fols. 68, 94, 89, 127, 131, 136 and 143.)

Teeson, pilot of Rip Van Winkle, says she passed 350 feet eastward of course of Johnson (fol. 60,) and about 150 feet to the west of the Arnold on a diagonal course, and about 50 to 75 feet from her hawser tier (fol. 57,) and had got about to the northward of the Arnold (fol. 61,) and 200 feet off of her port bow (fol. 61,) when the Syracuse ran into her, and struck her on the port paddle box with the bluff of the port bow of the Colgate, a large tow on the port side of the Syracuse, and did very extensive injuries to the Rip Van Winkle, disabling her (fols.

58 and 59.) The collision took place about opposite the buoy (fol. 73.) Shown on the map.

The cause of the collision was that either the Syracuse had taken a sheer* (fol. 58,) after answering the whistle of the Rip Van Winkle (probably to pass the hawser tier of the Joe Johnson.) and not being able to break her sheer which became more rank to port every moment in consequence of having a heavy laden tow, (an ice barge of 600 tons burthen,) drawing ten feet of water on her port side, (drawing her to port every moment,) ran into the Rip Van Winkle, and did the damage above alluded to. Teeson says if Syracuse had kept on her course without taking that sheer, she would have passed the Rip 300 feet or more off (fol. 94 ;) OR, she was so mismanaged, having plenty of channel room to the westward of the Rip Van Winkle's course, that notwithstanding her answering whistle she threw herself in the way of the Rip Van Winkle.

No pretense was set up on the trial that the Syracuse answered the signal of the Rip Van Winkle in any other way than by merely blowing an answer. The Rip alone ported her helm.

The Rip Van Winkle also, when the Syracuse (fols. 67 and 68,) took her sheer, tried to go still more to the eastward in order to avoid the blow.

The case set up by the Syracuse is, that she did not sheer into the river to avoid the hawser tier of the Johnson *at all*, she was lapping on to it, however about 15 to 20 feet (fols. 188 and 189.) She saw the Rip Van Winkle one and a half miles off, bound on a course to the westward of her tow, and supposed, as a matter of course, she was going to the westward of the Johnson, until she blew her whistle when over half a mile off, and heading to the eastward, which signal she answered (fol. 188.) That she could not port her helm without running on to the hawser of the Johnson (fol. 191.) That she slowed and stopped, and when under no steerage way the Rip *(who might have taken a more easterly course)* (fols. 185 and 165,) came up in such a direction as that she ran into the Colgate and did to herself the injury aforesaid. At which time the Syracuse was not over 10 feet or twenty feet off from the course of the Johnson, and her way perfectly stopped.

---

*There was 350 feet and over of channel room for the Syracuse to go by in, and westward of the Rip Van Winkle's course—Captain Oliver thinks room enough. (See fol. 120.)

Her pilot claims that it was the Rip's fault not to have slowed in proper season, or not to have gone far enough off to the eastward, which he says she might have done.

The District Court (Hon. Wm. D. Shipman of District of Connecticut, sitting in Judge Betts's place in New York,) decreed in favor of libellant.

In his opinion, a copy of which is hereto annexed, he finds that the Rip Van Winkle gave both the Johnson and the Syracuse ample room to go to the westward of her. That the Johnson did so with perfect safety ; the Syracuse ought to have done so but failed, and came in collision with the Van Winkle, and must be held in fault and responsible for the damages.

He also is inclined to the opinion that the Syracuse took a sheer out to pass the Johnson, and probably might have succeeded in passing her had she been manageable, but she had a barge lashed to her port side which was more deeply loaded than the one on her starboard, and it is highly probable, in view of the evidence, that this rendered it difficult for the Syracuse to break her sheer in time. On this decision decree was entered for the libellants for $\$7,489\frac{36}{100}$, besides costs. From such decree the claimants of the Syracuse appealed to the Circuit Court, before Hon. Sam'l Nelson, associate Justice of this Court, and he reversed the decree of the District Court, holding in substance that the Syracuse did not make the sudden sheer out into the river after the whistle was blown and answered, complained of by the libellant, but had passed the hawser tier of the Joe Johnson, and had lapped on to that tug some feet before the whistle was blown by the Rip Van Winkle and answered by the Syracuse. That on answering the same the Syracuse had rung her bells to slow, stop and back, which turned her head to the westward, and expels the idea of a sheer into the Rip Van Winkle. but was the best movement the Syracuse could make. That there was abundance of room for the Rip Van Winkle to have passed in safety, and she must have been nearer to the west shore than she supposed, and that the Rip Van Winkle was guilty of fault in maintaining too high a rate of speed under the circumstances of the case.

From the Circuit Court the libellant appeals to this Court.

POINTS.

POINT FIRST.—The Syracuse was wholly in fault.

(*a*) She did not port her helm as her signal and the Act of Congress of 1864 required.

(*b*) After the signal was given and she had answered it she sheered to port, in consequence of her pilot putting his helm to starboard, or in consequence of the Syracuse being unmanageable.

Article 13, Chap. 69, Act of April 29, 1864, Statutes at Large says: "If two ships under steam are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass to the port side of the other. What is meant by "end on or nearly end on" is defined in The Nicholson, 7th Wallace, p. 656. This is also the established English rule, see 1 Wm. Robinson's Rep., p. 288.

By the Revised Statutes of the State of New York, (2 N. Y. Rev. Stat., p. 949, sec. 1, 5th Ed.,) it is provided that whenever any steamboats shall meet each other on the waters of the Hudson River, or on any other waters within the jurisdiction of this State, each boat so meeting shall go towards that side of the river or lake which is the starboard or right side of such boat, so as to enable the boats meeting to pass each other with safety. This Court in the case of the Vanderbilt, in 6th Wallace, p. 225. have passed on this point and sanctioned the rule. This rule has been held to be applicable to the case of a side-wheel steamer meeting a propeller having a tow, 22 How., 461.

4Z 163

By the rule laid down by these statutes, and in fact by the general maritime law in a case of doubt, *every presumption is against the Syracuse, for she failed to port her helm.* The burden lies on her to make out a justification. The Washington, 3 Blatch., p. 276.

The rules of the Supervising Inspectors, (which by virtue of the Acts of Congress of July 25, 1866, Statutes at Large, 14th Vol., p. 228, Sec. 9; amended by Act of February 25, 1867, 14 Statutes at Large, p. 410, have the force and effect of the rules laid down in the Act of 1864,) also condemn the Syracuse thus :

Rule 1. Provides as to the signals for steamers meeting each other ; one whistle each, to port ; two whistles each, to starboard their helms.

These signals to be made :—

Firstly. By ascending steamer, which in this case was the Rip Van Winkle going up the river.

This rule is enjoined by its language on all steamers, either by day or night.

Rule 2. That the signals shall be made by the boats when at least 800 yards apart.

The testimony of Teeson and of Lansing shows the Syracuse heard the signal, and answered same when both boats were half a mile off. Marshall makes the distance a mile off. Half a mile is 875 yards.

POINT SECOND.—Did the Syracuse after answering the whistle to go to the right port her helm and carry it out according to the rules of law? If not, was she excusable for not doing so?

As to the porting the Syracuse's helm, the weight of testimomy is (as will be seen in considering the next point,) that so far from porting her helm she actually starboarded it, whether to avoid the hawser tier or not is immaterial. There is no pretence set up by their proof that they *did port* their helm *at all*, or do any more than answer affirmatively the Rip Van Winkle's whistle.

The Pilot of the Syaacuse seeks to excuse himself for not porting his helm, by saying that it would have taken them into the hawser of the Johnson, (fols. 191 and 192,) while at the same time the pilot of the Syracuse thought at one time the Rip was going to the westward of them, (fol. 188,) yet a careful investigation of the testimony of the Pilot and Captain, shows that they do not claim that there *was not a time* when they might not have done so and avoided the hawser tier. In fact the Pilot of the Syracuse admits that if he had ported his wheel at the time he blew his whistle there was plenty of room to go clear (fol. 193.) The Syracuse people waited too long before they thought of porting, and then it was too late to do it, as they were then 5 to 20 feet off from the course of the Johnson's hawser tier. But they fail to show that the Syracuse might not have slowed and stopped her way in proper time so as to have got behind the course of Johnson's, *and as the Rip passed over on a diagonal line* 300 *feet to the eastward* of the Johnson they likewise would have been avoided. Teeson says that if the Syracuse had kept her course, and followed down after the Johnson, there would have been plenty of sea room (fols. 63 and 94.) Seward also says plenty of room (fol. 143.) Teeson shows the sheer of the Syracuse was sudden, and describes its effect in same manner as spoken of by Hayford (fols. 68 to 71.)

But this claim of the Syracuse people is shown to be untrue. They say they were 15 to 20 feet off from the Johnson's course, (fol. 189,) which last was about 100 feet from the west bank of the channel (fol. 188.) Their tug was about 66 feet over all, (fol. 168,) and tows about 30 feet in all, (fol. 168,) say 100 feet, yet their own witness, Coone, admits (fols. 205 and 207,) that the Syracuse within the moment of collision was 100 feet to the westward of the middle of the channel, (fol. 209,) which there all hands admit to have been about 900 to 1000 feet wide, (fol. 181,) so that, at or about that time, the Syracuse was about 400 feet from the west channel bank, so that assuming the Joe Johnson was hugging the west channel bank, it would have given her ample room to have ported her helm (fols. 205 and 207.)

Then again the evidence of Deming and Captain Oliver of the Joe Johnson shows that they heard a crash, looked out of their port window and saw the Syracuse coming down quartering on them in a direction aiming with her bow to them, 200 feet off of their larboard hand, which latter evidence refutes the story of the claimant's witnesses, in the particular that they were only 15 or 20 feet to the eastward of the course of the Johnson, and also demonstrates that they had plenty of sea room to move in.

The learned Judge in the District Court put his decision mainly upon this point, and held the Syracuse in fault because of its fault in not avoiding the Rip Van Winkle when there was a clear channel space of 600 to 700 feet between the course of the Arnold and the west channel bank; and under the findings of the learned Judge there can be no escape for the Syracuse on this appeal.

POINT THIRD.—The Syracuse took a sheer which became more rank as it became more developed, and ended in running into the Rip Van Winkle—

The following witnesses show that the Syracuse took a sheer, viz.: Captain Teeson, the pilot of the Rip Van Winkle, describes it lucidly, and its effect as he progressed in the hope to outrun it (fols. 68 to 71.)

Captain Weatherwax, taking his explanation in connection with his testimony, shows that he observed the Syracuse sheer out to pass by the hawser tier of the Joe Johnson, and *kept on that course or sheer* until she came into the Rip (fol. 146.) He remarked to Teeson, (fol. 112,) that tow is coming pretty close to us, did she answer our whistle? Teeson says yes. Witness says she does not appear to alter her course.

All this time the Syracuse had plenty of room to go to their westward without running into them. (fols. 103, 94, 95, 108, 127, 131, 136, 143.)

Captain Seward, of the Arnold, testifies that he saw the Syracuse sheer out into the river apparently to pass the hawser tier of the Joe Johnson in front of them, and he saw no change of the course of the Syracuse after that until the two boats came together (fol. 143.)

Captain Shook's testimony shows that the next day after the collision, Lansing, the Captain of the Syracuse, admitted he followed the Joe Johnson and sheered out to pass her just before the collision (fol. 213.)

Captain Post testifies that Lansing admitted to him that the Syracuse hauled out and ran into the Rip, (fol. 215,) so that by the testimony of these five witnesses it is established that the Syracuse when about lapping on to the Joe Johnson's hawser tier sheered out into the river to pass it; that this was about the time of the whistle is also evident from the claimants' testimony, as they admit they answered the whistle when about lapping on the Johnson's hawser tier.

Marshall's (Syracuse's pilot) testimony is not positive that *he did not sheer*, but only that he does not recollect sheering at all (fol. 197.)

Another fact is a conclusive demonstration of the mismanagement of the Syracuse. It is this: If the Syracuse was lapping within ten feet on to the course of the Johnson it must be mathematically evident that if the Rip could pass the Johnson in safety 300 feet off on a diagonal line, (fol. 137,) she must also have passed the Syracuse in safety unless the latter sheered out into the river, because the Rip Van Winkle was widening the space between her and the Syracuse as she progressed; and the Syracuse, according to their story, was only a short distance to the eastward of the Johnson's course, and behind her at least 450 feet, the length of the hawser—therefore every second of progress on the part of the Rip Van Winkle widened the angle between them.

The map in the manuscript of the record shows that the Syracuse was mismanaged, otherwise it was morally impossible for the collision to have taken place. For taking the vessels to be on the courses they were on, as testified to by Teeson and Oliver, they could not have come together without either the sheer or gross mismanagement on the Syracuse's part.

Another fact demonstrating the sheer of the Syracuse is the evidence relating to the course she took. Thus, after running into the Rip Van Winkle, the pilot of the

Joe Johnson and its captain, after hearing the crash, looked out of their port windows and saw the Syracuse coming in a direction quartering on their bows, and about her length (say 230 feet) off, and as she came up she gave a slight blow to their fenders, fetching up alongside, (Oliver, fols. 128, 129), (Teeson, fol. 74), (Deming, fol. 133.)

That this would be the exact course the Syracuse would take is evident from the testimony of Hayford, who says that those two barges were but a slight tow for the Syracuse (fol. 148).

That the barge on the Syracuse's port side, as in this case drawing most water, and being heaviest weight over the tow on her starboard side, would, if a sheer were taken, draw the tug's head to port (148), and take her nearly across that channel before one man alone could with difficulty break the sheer, (fols. 151, 152.)

This was provided the Syracuse was in motion, but if they attempted to stop the boat, and did succeed in stopping her, the effect would be just the contrary, viz.: the head of the Syracuse would then go to starboard (fol. 149.)

Teeson says the Syracuse went to the westward after the blow (74). By looking at the map, it illustrates under the last named testimony what would occur, namely: that the Syracuse going on a pretty good jog, because she came down from Athens shipyard to the place of the collision in fifteen minutes, viz: two and a half miles, which was at least eight to ten miles an hour. Her pilot takes it into his head after seeing the Rip, and answering her whistle, to take a sheer and pass the Johnson's hawser tier. Having taken on this ice barge at Athens, and probably not *familiar with the operation of it on his steerage way*, he, nevertheless, after taking the sheer finds himself going rapidly to port, he attempts to break his sheer but cannot do it, and finally, in order to do it, he rings his bell to slow and to stop, but it is too late, he is on top of the Rip. After using the latter up, the blow has the effect of retarding the momentum of the Syracuse, which then begins to operate in an opposite direction, and she runs down to starboard on the Joe Johnson, by which time her way is finally stopped. The injury done to the Rip Van Winkle was consistent with the peculiar course of the Syracuse. It was, if her side house was scooped off from her. fol 100, 147.

POINT FOURTH.—The Syracuse's course demonstrates the gross fault of the pilot of the Syracuse—

Firstly. In not porting her helm, or then slowing his boat when whistle was blown, in time, having plenty of channel space.

Secondly. In taking that sheer and not slowing and stopping in time.

Thirdly. In not having some one to help him at his wheel to break his sheer, or by ringing for one of the alleged look-outs, bring him into the pilot house.

Fourthly. In answering affirmatively the whistle of the Rip, and then acting contrary to her signal.

Lastly. The allegation that the Syracuse was not going over three and a half miles an hour is untrue.

For,

Captain Shook says she was going one-third faster than the boat he was in, (fol. 212), viz.: the America, which last was going four and a half to five miles, which would make the Syracuse's speed six to six and a half miles an hour.

That the Syracuse was under good headway is evident from her carrying away about 120 feet in length of the side of the Rip Van Winkle (fol. 59). Witherwax shows she was going twice as fast with this light tow as with the usual heavy tow (fol. 121).

Port tow was 600 tons burthen, drew ten feet of water, and was heavily laden (fol. 68). *Her engineer, Drake, admits she was going six miles an hour* (fol. 202).

The fact that she came down from Athens to the place of collision, two and a half miles in fifteen minutes, shows what her speed was. The fact that she had a short smoke stack in this case is of but little importance, as while she lay in the channel at Athens to fasten on to this barge she must have been making steam, which gave her increased momentum in the next fifteen minutes.

Another very conclusive fact as to her momentum is, that after running into the Rip she ran down to starboard quartering on to the Joe Johnson, who was going four miles an hour, *and overtook her* and came up, struck the Johnson's fenders and went up side and side (fol. 129).

POINT FIFTH.—The fact that the Syracuse and the Johnson respectively assented to the Rip Van Winkle's signal of one whistle, by respectively blowing a single whistle when the respective boats were more than 800 yards apart, shows that all parties considered there was ample room for the respective boats to pass each other by porting their respective helms.

If there was any doubt on this point at the time, it was the duty of the pilot of the Syracuse to have blown an alarm, which is a succession of short whistles rapidly blown, (see rule of Supervising Inspectors,) also to have stopped and reversed her engine, which last she did not do.

The Syracuse having misled the Rip Van Winkle in this particular, is responsible for the consequences herself.

The learned associate Justice's finding at circuit makes this much clearer against the Syracuse. He is of the opinion that the weight of testimony is that the Syracuse did not blow her answering whistle, until after she had passed the Johnson's hawser tier, and had lapped some few feet on to the Johnson, and was some 15 to 20 feet to the east of the Johnson.

If that finding of the learned associate Justice be warranted by the testimony, then the fault of the Syracuse is more flagrant, inasmuch as at the very time the learned Justice finds there was not room for the Rip Van Winkle, we find the Syracuse answering her signal in effect:—

" Yes, there is room to pass me if each ports," for this is the result of the signal.

THE RIP VAN WINKLE WAS NOT AT ALL IN FAULT.

The evidence of Witherwax and Teeson demonstrates conclusively that she could have done nothing else to have avoided the collision. (See Witherwax, fols. 118, 119, 122, and the whole of Teeson's testimony.)

POINT SIXTH.—The Rip Van Winkle was right in approaching Brandow's Hollow in the manner she did.

The evidence on this subject from all the witnesses is that the Rip Van Winkle approached the Hollow in the usual course, taking the westland up the river until about opposite the Hollow, and that then it is the rule to head over towards the eastward for Hudson Lights. The Rip Van Winkle was, therefore, without fault in that particular. (See Teeson's testimony, fols. 56, 73, 84).

The Rip Van Winkle was properly furnished with lights as required by law (fol. 65). Had proper lookouts on duty (fol. 66), all proper officers on duty (fols. 66, 67).

POINT SEVENTH.—Was the Rip Van Winkle right in giving the signal she did, and at the time she did? Was there room for her to go to the eastward in the manner she did, and at the time she did, and could she have gone either to the westward of the Joseph Johnson or to the eastward of the Arnold?

It is evident from the testimony—

1. Of Captain Jno. Oliver, } of the Joseph Johnson.
2. Pilot Theodore Deming } (fols. 124, 132),

and of

3. Captain Frank Teeson (fols. 71, 103).
4. William Witherwax (fols. 111, 119), of the Rip Van Winkle, and of—
5. Captain Lansing of the Syracuse,

That the Rip Van Winkle could not have gone to the westward of the course of the Johnson. The Joe Johnson was hugging the west bank of the channel, not over 100 feet off, and such a course would have been highly imprudent (fol. 135).

It is also apparent and demonstrable from the testimony of—

1. Hiram Seward, Pilot of the Arnold (fol. 139), and by—
2. Captain F. Teeson (fol. 72) } of the Rip Van Winkle,
3. William Witherwax (fol. 111) }

That the Rip Van Winkle could not have gone to the eastward of the Arnold. So that her course was restricted to go between the course of the Joe Johnson and that of the Arnold ( ), between which there was a channel width of between 6 and 700 feet, and so the District Judge below finds. The answer admits that there was 600 feet of channel space between the Johnson and the Arnold (fol. 33).

Prior to, however, adopting that course, she gives the whistle, and the case presented was precisely the one for a whistle, inasmuch as she was the ascending steamer, and notified the approaching tows how she intended going. Their answer to it was an acceptance of and assent to that signal. That there was room enough for both vessels to have passed each other between the course of the Johnson and the Arnold is apparent from the testimony of—

1. Captain John Oliver (fols. 126, 127).
2. Theodore Deming (fols. 136, 137).
3. Hiram Seward (fols. 139, 143).
4. Captain Teeson (fols. 60, 103), and
5. Witherwax, (fol. 111).

Witherwax says distinctly the only course the Rip had was to do as she did (fol. 118).

The only two witnesses for the claimants show that they claim the grave fault of the Rip Van Winkle to be *in not going far enough to the eastward*, (fol. 185).

But Seward and Teeson show that the Rip went as far to the eastward as she could, without running across the track of the Arnold, so much so that as soon as the pilot of the Arnold found out that the Rip Van Winkle was disabled, he had to slow his boat so as not to run upon her (fol. 142).

POINT EIGHTH.—Ought the Rip Van Winkle to have slowed earlier, and in what time? That involves a consideration of this question,—

Was there at any time any necessity for slowing and stopping until the vessels were nearly together? If so, then it was too late, as if they slowed and stopped then the risks would have been greater, and the Rip would have been sunk.

That it would have been wrong for the Rip to have slowed when she met the course of the two tugs nearly head on at Brandow's Hollow, is quite apparent, as the usual course then was to take a course to the eastward, pointing to Hudson's Lights. If she had slowed and stopped before blowing her whistle, the result would have been that she would have been in the way of the Johnson *primarily*, and not in that of the Syracuse, consequently it was her duty and province to have kept right on. *There was then no hazard of a collision whatever.* Marshall, Pilot of the Syracuse, makes no complaint against the Rip for going on. He thinks there was plenty of room. He claims that *the fault of the Rip was in not going more to the eastward*, (fol. 193). Then after blowing her whistle, and being answered, *the Rip Van Winkle had no right to slow and stop*, nor was there any necessity for it. Her duty was plainly to go in the course pointed out by her signal, which was thus accepted. If she had stopped then in opposition to her signal, she clearly would have been liable to all accidents. But after keeping on and encountering the sheer of the Syracuse, she could not stop without danger of being sunk. On the last point the testimony of Teeson (fol. 67), Witherwax (fol. 118), and Marshall (fol. 192), is quite plain. This last witness, *in speaking of the Rip going to starboard, says, that if she had done so there would have been no Rip Van Winkle*, (fol. 192).

Witherwax is quite emphatic that the Pilot of the Rip Van Winkle could have done no differently from what he did (fol. 119).

Lansing does not put the fault on the Rip for not slowing and backing, but for not going far enough to the eastward (fol. 165).

POINT NINTH.—*The Syracuse* violated the 8th Rule of the said Inspectors when she attempted to pass the hawser tier of the Joe Johnson. This 8th Rule provides that when steamers are running in the same direction, and the pilot of the boat, which is astern, shall desire to pass either side of the boat ahead, he shall give the same signal as in Rule 1st, viz.: one or two whistles.

POINT TENTH.—The libellant produced two first class pilots of many years' experience on the Hudson River, in all classes of vessels, viz.: *Teeson* and *Witherwax.*

Their testimony is intelligent and lucid, their minds on the business before them. Not as in Captain Lansing's case, preparing to take a comfortable smoke in the engine room (170).

He also produced Captains Oliver, Deming, and Seward, parties entirely disinterested, very competent, and skilled in their profession, whose testimony is confirmatory in every respect with that of his two pilots. He further produced two disinterested parties, Shook and Post, both captains of vessels, who testify to conversations with the Captain of the Syracuse, tending to support the fact developed in our testimony, viz.: that the Syracuse took a sheer out.

POINT ELEVENTH.—The witnesses produced by the defence are numerically weaker, and, in a maritime sense, inferior to those whom we produce.

1st. *The Syracuse's captain, Lansing, was really not on duty, he was preparing for a comfortable smoke in the engine room (*fol. 170.*)* Had apparently heard nothing that had transpired before his hearing the engine bells, as he had not heard the whistle of the Rip. He came out of a lighted engine room, through a lighted gangway, and had to walk forward from 75 to 100 feet, yet attempts to locate positions of vessels at the moment of his getting forward, without regard to the fact of his eyesight having been obscured by the darkness after coming out from the light of the rooms and passage he traversed. He thought his pilot was in too much of a hurry to stop the Syracuse.

Saw no necessity for it (fol. 174). He further makes the Syracuse to have *passed the Arnold before the collision* (fol. 161), differing toto cœlo, on this point with his pilot and our witnesses.

The witness Marshall, Pilot of the Syracuse, is liable to criticism.

1. He will not swear positively that he did not sheer. He says he does not recollect sheering out (fol. 197).

2. He did not *observe the Arnold at all* until after the collision (fol. 195), but differs with his captain in saying they had not passed Arnold before collision.

3. Not having seen Arnold at all before the collision he considers, and no doubt acted on the supposition, that there was much more room for the Rip Van Winkle to have gone to the eastward. From that view he finds it as a grave fault on the part of the Rip Van Winkle not that she did not slow, not that she gave one whistle and went to the eastward, but that she did not go far enough to the eastward (fol. 193).

4. Marshall also differs from every other witness in considering that there was room enough for the Rip Van Winkle to have gone to the westward, and he expressed surprise when she whistled to go to the eastward (fol. 188).

The witness Coon, evidently knows very little, and his testimony is of no importance.

Whichever way you look at this case it will be seen that there was no danger whatever to the Rip Van Winkle from her course until the Syracuse avoided going to the westward and took her sheer, which became rank when taken; the collision was inevitable, and it was the fault solely of those navigating the Syracuse.

POINT TWELFTH.—The learned Circuit Judge, whose decision reversing that of the learned District Judge we now appeal from, we submit erred in his consideration of the case at bar. The learned Justice remarks in his opinion upon the confused and painfully tedious mode of taking the evidence by questions and answers in this case and not by way of narrative. What effect that had on his mind we are unable to state, but we propose to correct certain misapprehensions of the case which appear in his opinion.

His opinion is based on the conclusion that the evidence fails to establish the sudden sheer of the Syracuse out into the river after blowing her answering signal of the one whistle to the one whistle of the Rip Van Winkle. In arriving at this conclusion the learned Justice disregards the positive testimony of Teeson, backed up as it is by the testimony heretofore collated in these points, and supported as it is by the corroborative facts of the case.

Now the learned District Judge below, who heard all the witnesses examined below, believed the testimony of Teeson whom he saw on the stand and contrasted with the other witnesses. The learned Associate Justice only could collate the testimony when it was cold on paper.

We submit preliminarily that on a question of pure fact or of credibility the judgment of the tribunal who had the witnesses before them, is the better finding.

The Associate Justice also in his opinion assumes that the whistle of the Syracuse in answer to the signal of the Rip Van Winkle, was not blown until after the Syracuse had passed the hawser tier of the Johnson and had lapped 15 to 20 feet on to the Johnson.

In arriving at this conclusion he ignores the following positive testimony, viz.:

Teeson (fol. 61.)	
" 63.	
" 75.	
" 80.	She (*ie.* Syracuse,) was tracking right along down after Johnson and a little to the windward of her.
" 81.	She was to eastward of Johnson in range of her hawser tier.
" 82.	The Syracuse was coming down pretty nearly along behind the Joe Johnson.
" 94.	Syracuse astern of Joe Johnson.

fol. 94. If the Syracuse had kept on and came right down inside the Joe Johnson's hawser tier a little, we would have cleared her 300 feet or more.

" 101. Syracuse ½ mile or more off when whistle blown.

" " Syracuse off a considerable ways from Rip Van Winkle's larboard bow, tracking down in same course as Johnson but to her windward.

Witherwax, (fol. 108.) I think Johnson ahead of Syracuse coming along.

" 110. Did not notice Syracuse alter her course, but it was a short time from time he got from behind that other tow until we came together.

" 146. She (*ie.* Syracuse,) sheered out to clear the tow.

Oliver, 128, 129.

130. Syracuse started ahead and cleared Joe Johnson's hawser tier.

131. Syracuse had not got down to us when Rip passed.

Deming, 133.

137.

Seward, 139. I saw one of the tows sheer out into the river to clear the other tow.

141. Heard two whistles at same time.

143.

Lansing, 158. Johnson 3 or 4 lengths ahead of Syracuse when he first saw Rip Van Winkle.

Rip Van Winkle three-fourths of a mile off when he heard whistle.

168, 173. *Heard whistle before he went out of Engine Room.* After I come out Engine Room on forward deck, Rip Van Winkle ½ mile off. (174.)

174. When he came out on deck had just passed Johnson's hawser tier.

180. $1\frac{1}{2}$ to 2 minutes up to time of collision after whistle.

Marshall, Pilot of Syracuse is only witness who sustains Judge Nelson's view, yet in fol. 191, he says, I dared not sheer the Syracuse rank to westward, *as I would have run into Johnson's hawser.*

197. Rip Van Winkle a mile off when she blew her whistle. He had not sheered out to pass Johnson's hawser tier before whistle blown.

Coon, 205. At time of whistle was astern of Johnson.

200. At time of collision had got up to hawser tier.

Shook, (fol. 213.) Yes, he said she had followed Joe Johnson, and sheered out to pass her.

Yet if the learned Associate Justice was right in his construction of the testimony, the fault of the Syracuse become most flagrant because that she whistled while passing the Johnson's quarter, well knowing, taking the Circuit Judge's view, as she must have done, that there was not room enough for the approaching Rip Van Winkle to pass her.

As to the observations of the learned Associate Justice on the speed of the Rip Van Winkle, they are disposed of in the succeeding points.

The lapping by the Syracuse of the Johnson within 15 to 20 feet of her quarter was a violation of the Act of the State of New York which prohibits one steamboat to pass by another steamboat under weigh nearer than 20 yards.

1 Rev. Statutes of N. Y., O. P., 682.

Did not the Rip Van Winkle especially after having received the Syracuse's answering whistle have the right to suppose the way was sufficiently clear to allow the Syracuse to port her helm and the Rip Van Winkle to pass in safety? Had those navigating the Rip Van Winkle the right to assume that the Syracuse would violate the law?

POINT THIRTEENTH.—This cause presents mainly questions of fact, the learned District Judge who heard the witnesses examined orally before him and who delivered a very lucid opinion which is annexed to these points we submit is better able to determine the cause on its facts and merits than an appellate tribunal which listens merely to it when cold on paper. So that we now submit and with entire respect that this tribunal should adjudge that the learned Circuit Judge's opinion on the mere facts and the mere testimony which he did not hear, save in writing, should not outweigh or overrule the learned District Judge's opinion, who heard and saw the witnesses.

6 Wall
216
3 Wall
267

If this court sanctions such a province on the part of the Circuit Judges, they will find the Circuits and themselves overburthened with appeals on mere questions of fact.

POINT FOURTEENTH.—The counsel for the Syracuse before the Circuit Court, argued strenuously that the learned District Judge had made four distinct errors in his opinion, which errors led him to decree in favor of the libellant.

First. That the Judge erred when he said the Rip Van Winkle headed for Merino Point. The counsel for the Syracuse omitted to cite the following from the record, which shows that after the Rip Van Winkle headed over (after she reached Brandow's Hollow) to the eastward, her course became more decided in a direction, first, to Hudson Lights, and thence easterly from Hudson Foundry Lights to Merino Point, and even to the flats below the Merino Point, viz.:

Teeson (fol. 73), I steered inside of Hudson Lights, I headed to the east of Hudson Lights from the time that I crossed from the Hollow over in the Reach, (fol. 137 ditto).

Fol. 84. " When we altered our course and steered for Merino Point.

Fol. 85. "When I steered off from the hollow to go across the reach for Merino Point.

Fol. 86. "When I blowed my whistle at the hollow I went well over to the eastward, &c."

Fol. 88. I gave her a good tack sheer over in order to approach the eastland in due time.

Fol. 131. When she passed Johnson, Rip was quartering for Merino Point. The Rip kept sheering more and more into the east shore (fol. 102).

Teeson (fol. 90). When we altered our wheel we were heading pretty broad in on the flat. The flat below Merino Point. Witherwax (fol. 108). We were headed to eastward of our course considerably, and headed her more to the eastward still.

Fol. 136. "I noticed the Rip going to eastward a little more than usual."

Seward (fol. 141). She was headed more to the eastward than then.

The second error he charges upon the District Judge below, is his statement in his opinion (see p. 31 of printed points), viz.: it is claimed by the libellant that the Syracuse sheered out to the eastward in order to pass the Johnson.

The appellee's counsel insisted that there was not a particle of testimony to show that the sheer was to pass the Johnson. but was to pass her hawser tier.

In reply we insist that the counsel is hypercritical. The learned Judge employed the term "to pass the Johnson" as a "*nomen collectivum*," as including her "hawser tier as well as herself."

The Syracuse could not very well pass the Johnson without passing her hawser tier and *vice versa*. The idea propounded was that the Syracuse took a sheer to pass the Johnson and group of boats under her dominion.

The third error he finds on the part of the learned Judge below, in his opinion, is where he says:—

The Rip Van Winkle gave both the Johnson and the Syracuse ample room to pass to the westward.

This the counsel for the Syracuse denied to be the weight of testimony, and quoted from four folios of the apostles, he omitted to quote from the following folios which refute his denial.

Rip Van Winkle as she passed the Johnson gave the Syracuse plenty of room.

Teeson (fol. 68). 350 feet from between Rip and Johnson as he passed latter.

Fol. 94. 350 to windward of Johnson. Room enough to the westward of Rip.

Fol. 89. Syracuse was 300 feet to westward of Rip Van Winkle when she took her sheer.

Fol. 94. Would have cleared Syracuse if she had not sheered 300 feet or more.

Fol. 95. Syracuse when she came into the Rip was 600 feet or more from Western Flat.

Fol. 103. Syracuse, if she had not taken sheer, would have cleared us 300 feet.

Fol. 108. Room enough for Syracuse and Rip to have
" 127. passed between Johnson and Arnold. Rip
" 131. gave us plenty of room as she passed.
" 136.

Fol. 110. Plenty of room for Rip and Syracuse to have
" 120. gone between Johnson and Arnold.

Fol. 139. 600 feet between Arnold and Johnson's course.

Fol. 134. 700 feet between Arnold and Johnson's course.

Fol. 143. Room enough for Syracuse between Rip and Johnson.

Fol. 142. Rip Van Winkle went so near course of Arnold as to be in front of her, and latter had to slow to prevent herself from running into her.

The fourth error, the counsel for the Syracuse claimed to exist, in Judge Shipman's opinion, was this, that the Judge said that the Rip sheered to east as she passed Arnold's.

The appellant's counsel forgot the above citations, showing that the Rip Van Winkle kept sheering more and more to the east shore as she went over from Brandow's Hollow to eastward. See folios—

86
108
117
126
136

Coon observed the Rip off of his starboard bow (fol. 208).

That is, he stood on the starboard bow of the Colgate, which was on the port side of the steam tug Syracuse. He is asked off which of the bows of his vessel he saw the Rip Van Winkle, and he replied, while standing on his starboard bow he saw her, thus implying that she bore off his starboard bow.

This is a clear proof that the head of the Syracuse and her tows were turned out into the river to eastward, for otherwise he could not have seen the Rip Van Winkle off his starboard bow.

If turned out into the river to the eastward, it is a clear corroboration of our pilot and of our case that she was sheering out.

The counsel for the Syracuse spent at the circuit a great deal of labor to show that the sheer of the Syracuse, spoken of by the witnesses, was a slight sheer taken by her to pass the Johnson's hawser tier, which he argued was before the whistle was blown. On this point he labored with great effort, and induced the learned associate Justice to agree, but such a view will be seen to be erroneous, when it is reflected that all parties concede that the respective whistles were blown, when the two vessels, *i.e.*, the Rip Van Winkle and the Syracuse were more than a half mile apart. To prove this see :—

Marshall, pilot of Syracuse, who says, whistles blew a mile off (fol. 197).

Lansing and Teeson make the distance a half mile off.

See folios 87, 159, ½ to ¾ mile off.
197, a little over ½ mile.

So that the sheer of the Syracuse to pass the Johnson's hawser could not have been *before* the whistle as the hawser was only 75 fathoms long. It must have been taken after the whistle.

It was, therefore, a plain violation of their answering whistle, was suddenly and unexpected in its nature, and according to the testimony of Hayford, such a sheer with such a heavy barge on her port side would make her go more (fol. 148) to port every moment. It could not be broken without running nearly across the channel (fol. 151.) And as the pilot and master of the Syracuse admit they did not back her, (see fols. 164, 201, 203,) and as Lansing (master of the Syracuse) admits, in effect, that it is difficult to stop Syracuse without backing her (fol. 142,) it is quite apparent how the collision occurred, and that Teeson told the entire truth.

The answer of the Syracuse in the District Court (fol. 33), admitted that the channel space between Arnold and the Johnson was 600 feet, and that the Syracuse was as near to the Johnson as was proper for her to go. If that be so, how can one explain that *after the crash* the Syracuse was 236 feet, or her length more out into the river, and to the eastward of the Johnson's course, bearing down on the latter, when before the crash she was just lapping on to the Johnson's hawser tier, unless on the principle that she had taken a sheer out into the river in the meantime.

And how can one believe either Marshall the pilot, or Lansing the master of the Syracuse, when they say that their boat and its speed was stopped, when you find from the disinterested testimony of both Oliver and Deming, that even after the crash the Syracuse was going at full speed, or that she caught up to and overtook the Johnson, and she came up to her, the latter going four miles an hour.

POINT FIFTEENTH.—The counsel of the Syracuse claimed, that the crowning negligence of the Rip Van Winkle was her running with the speed of seventeen miles an hour in a channel crowded with boats.

This we submit is disingenuous, the counsel for the Syracuse spoke below of there being 18 vessels. There were not 18 canvasses. There were 3 steamers each having tows, one (the Arnold with four boats astern,) going up, hugging the east channel bank; one (the Johnson) with 9 boats coming down hugging the western bank. Between them the Syracuse's answer admits there was 600 feet in width of channel space, leaving plenty of room for the Rip Van Winkle to have navigated in.

Where then is the crowded thoroughfare? The Syracuse and tow were about 100 feet wide. The Rip Van Winkle about 60 feet wide.

Now what business had the Syracuse, if this channel was so crowded, to answer the Rip's whistle, and thereby to have admitted that there was plenty of room for each vessel to have ported their helms in and pass each other safely?

What is the object of these whistles?

To meet the contingencies herein illustrated.

The Rip Van Winkle seeing this 600 feet of channel space, and these two vessels (the Johnson and the Syracuse) approaching, whistles once, which means I shall port my helm, I am going to the right. It is answered by each of them once, which means all right, we shall port our helms and shall go to the right also.

Such a whistle is a public notice. After answering it in the way she did, the Syracuse is estopped from setting up there was danger. If there was danger, the Supervisors' rules provide that where signals are so given and cannot be accepted, the vessel to whom the whistle is blown must blow an alarm, which is a succession of short whistles blown quickly, whereupon the ascending boat, which has the privilege of blowing the first whistle, will be apprized there is trouble ahead and can take the necessary precautions.

Here nothing was done of that kind. The result of which is that the Syracuse, when publicly appealed to as to there being room for each to pass to port, frankly and openly announces by a corresponding whistle, *yes, there is room.*

We have discussed that question, but we will conclude by saying that the pilot of the Syracuse, in folio 193, in effect, admits that there was room enough for him to have ported his helm, and to have gone to the right, and if he had done so the collision could have been avoided.

Witherwax, one of the pilots of the Van Winkle (fol. 120), says same thing, and Coon at folio 205 shows that the Syracuse was about 350 to 400 feet from west channel bank when the whistle was blown, thus showing she had room enough to port.

Lansing, master of the Syracuse, says no use for Rip Van Winkle (fol. 185) to have stopped at all, if he had went far enough to eastward.

Teeson says if he had slowed Rip Van Winkle would have been sunk (fols. 67, 108).

No pretence set up in the defendant's answer that the fault was in not slowing or stopping, on the contrary, they say the fault was in not going far enough to the eastward.

Marshall, 193.

Lansing, 185.

Lastly. The judgment of the Circuit Court below should be reversed and judgment given for the appellant, affirming the judgment of the District Court, or there should be an apportionment.

D. McMAHON,

Proctor, and of Counsel for

J. W. HANCOX,

The Appellant.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOSEPH W. HANCOX,
vs.
THE STEAMBOAT SYRACUSE.

Copy Opinion of District Judge.

OPINION.

SHIPMAN, J.

This is a suit for damages resulting from a collision. The libellant is the charterer of the steamboat Rip Van Winkle, at the time of the accident, running between New York and Troy, carrying passengers and freight. She left New York City on the 15th of May, at six o'clock P. M., on her trip to Troy. At about one A. M. of the same night she reached and passed Roger's Island. The wind was then south-east, blowing a fresh breeze. It was flood tide. Before reaching Brandow's Hollow her pilot discovered the lights of two tow boats in the river above, coming down, and one going up. These boats proved to be the Joe Johnson and the Syracuse coming down on the west side of the channel, and the Arnold going up on the east side. All three of these boats had tows. From Roger's Island to Brandow's Hollow the course of the Rip Van Winkle was along the western shore, or west of the middle of the channel. When she reached Brandow's Hollow she sounded her whistle once, which was the proper signal for her to go to the right, and the descending boats to go to her left. This signal was answered by the descending boats, with one whistle from each, showing that they understood the signal. Until reaching Brandow's Hollow, the Rip Van Winkle had the lights of all three of the tow boats on her starboard bow. When she reached that point and blew her whistle she ported her wheel, and straightened up the Reach, heading towards Wiswell's or Merino Point, below Hudson, on the east side of the river. At this period of time it is important to fix approximately the position of the four boats. The Rip Van Winkle, as already seen, was near Brandow's Hollow, between the middle of the channel and the west shore. The Joe Johnson was some distance above, and not far from the buoy. This buoy is on the eastern edge of the west flat. In other words, on the west edge of the channel, about half way from abreast of Wiswell's Point to Brandow's Hollow. The Joe Johnson was coming along down, hugging the edge of the flat on the west side of the channel. The Syracuse was astern of the Joe Johnson, not exactly in her track, but nearer the middle of the river. The Arnold was nearer the east side of the channel bound up, and at this point of time below the Joe Johnson.

The Rip Van Winkle was now heading up the Reach with the Arnold on her starboard, and the Joe Johnson and Syracuse on her port bow. She must pass to the westward on port side of the Arnold, and to the port of the two descending boats. The Arnold had nothing to do but to hold her course along the east side of the channel, which she did. The signal of the Rip Van Winkle had been blown and answered by the descending boats, indicating that the former and the two latter were to keep to the right. The Syracuse was but little astern of the Joe Johnson and both of them about half a mile from the Van Winkle. The track of the Arnold according to the testimony of her pilot, who is the best witness on that point, was near the eastern edge of the channel. Making the most liberal allowances, she and her hawser tier which tailed off some from the effect of the east wind, did not take up more than two hundred feet of the river, in other words her track and that of her boats in tow was east of a line drawn two hundred feet west of and parallel to the east channel bank. This left the rest of the channel for the Rip Van Winkle and the descending boats to pass each other, and as the channel in this vicinity is about nine hundred feet wide, it is obvious that they could have passed each other safely by the exercise of ordinary nautical skill. The duty of the Rip Van Winkle was to pass up as near the Arnold as she could with safety. This she did, and as she passed the hawser tier of the Arnold, she sheered more to the eastward, quartering across the Arnold's bow. She had already passed the Johnson and was a little past the Arnold, when the port bow of the port barge of the Syracuse, struck her forward of her paddle box on her port side, and inflicted considerable injury. At this time the Rip Van Winkle was as far to the eastward as she could get; at all events she was far enough to give the Syracuse ample room to have safely passed to the westward with her tow. She clearly had no right to go so far to the eastward as to collide with the Van Winkle as there was abundance of room for her between the latter and the west bank of the channel. It is claimed by the libellants that the Syracuse sheered out to the eastward in order to pass the Johnson, and could not break her sheer in time to prevent the collision. If she did, she committed a fault, she had no right to attempt that manœuvre until the Van Winkle had passed. If attempted, it was a rash and uncalled for experiment for which she ought to suffer. If she did not sheer to the eastward in the manner claimed, still she was in fact further to the eastward than she ought to have been. After the whistle had been blown, she had notice that the Van Winkle was going to the eastward of her and the Johnson, and her duty was to keep the west side of the channel and astern of the Johnson until the Van Winkle had passed; especially in view of the fact that the Arnold was also coming up to the eastward.

I am inclined to the opinion that the Syracuse did starboard her wheel and sheer to the eastward with a view of passing the Johnson, and that probably there was room enough for her to have done so and to have passed the Van Winkle safely, had the Syracuse been manageable, but she had a barge lashed to her port side which was more deeply loaded than the one on her starboard, and it is highly probable in view of the evidence that this rendered it difficult to break her sheer in time. But it is not necessary to rest the case on this point, the clear proof is, that the Van Winkle gave both the Johnson and the Syracuse ample room to pass to the westward; the Johnson did so with perfect safety; the Syracuse ought to have done so but failed and came in collision with the Van Winkle, and must be held in fault and responsible for the damages.

Let a decree be entered accordingly with an order of reference to a commissioner to compute the damages.

map is correct
[illegible] Jason fol 79

NOTE.—Let the map of the Hudson River in the vicinity of this collision, which was produced by the libellant, and marked × W. D. S., be filed as an exhibit in this case.

Seward –
Folio 145 – p 47 – Fol 134
p 43 – Folio 57 p 17
Fol 60 – p 17
Folio 95 p 28 Fol 102
p 31 – Fol 108 p 32 as to
bottom of 32
Fol 176 – p 58 How far Fol
193 p 64 towards bottom
Fol 209 p 71

Supreme Court

OF THE UNITED STATES.

JOSEPH W. HANCOX,
Libellant and Appellant,
vs.
THE STEAMBOAT "SYRACUSE."

Points for Claimants and Respondents.

The facts in this collision case are simple, the points in contestation few.

The "Syracuse" is one of the Albany and New-York tow boats, which was coming down the Hudson River on the night of May, 16th, 1866. She had carried away her smoke stack on her trip up, so that she could not make much steam, and she was coming down the river at the time of the collision at the rate of about three and a half or four miles an hour, by the land. The tide was against her, being flood. The night was quite light, so that lights could be seen for miles; and the wind was blowing fresh from the S. E., which in that reach was directly across the river. She had two barges in tow, one lashed on each side, the "Colgate," a heavy ice barge on her port side, and the "Roberts," a lighter barge on her starboard side. The stem of the "Colgate" was about twenty feet aft of the stem of the "Syracuse." She had been taken in tow at Athens a short time before the collision.

As the "Syracuse" went down the reach below Athens, she overtook the "Joe Johnson," also bound down, towing nine barges ranged in three rows, at the end of a hawser, 450 feet long. The "Joe Johnson" was going at the rate of about two and a half miles an hour, so that the "Syracuse" gained on her, and passing her hawser tier to eastward of it, approached the "Joe Johnson" herself.

At this time the lights of the "Rip Van Winkle" were in full view, coming up the river. She came up on the west side of the river, heading to west of the "Joe Johnson," till she was a little above Brandow's Hollow, when she changed her course to the eastward, her pilot thinking that there was not room to go to west of the approaching boats, whose lights had been seen and understood by him from the time he passed Rogers Island, two miles below. As she changed her course she blew one whistle to signify the change, and the whistle was answered by both the tow boats.

The "Rip Van Winkle" passed the "Joe Johnson" in safety, and passed also the propeller "Oliver A. Arnold," which with four boats in tow was going up on the east side of the river.

After passing these tows the port side of the "Rip Van Winkle" came in contact with the bluff of the bow of the barge "Colgate" in tow of the "Syracuse," cutting off her own guards from her forward gangway to her wheel, and doing the injury complained of. The "Rip Van Winkle" was coming up the river at the rate of 17 miles an hour, and her engine was neither slowed nor stopped while passing this fleet of eighteen boats.

I.—There is no question of either lights or look-outs.

Each vessel was seen from the other as soon as they came in sight of each other; and her character and position were perfectly understood from that time till the collision

II.—The libellant on page 10, of his points claims that the "Syracuse" was going at a speed of eight or ten miles an hour; but the evidence shows that this is a mistake.

a. She had left Albany about 7 P. M., and had, therefore, been six hours and a half running thirty miles.

She had stopped fifteen or twenty minutes to pick up the barge at Athens, which made her average speed during the whole time five miles an hour.

b. The tide was flood at the collision. It was, therefore, ebb when she first started. Her speed at the time of the collision must, therefore, have been *less than the average*, even if the tide had been the only thing to affect her.

The tide was two knots an hour against her. (Fol. 13.)

c. But she had taken on at Athens a heavy barge, twice as heavy as the one she had been towing before, which must have retarded her still more.

d. The suggestion that she bottled up steam at Athens, and, therefore, ran faster afterwards, has not a shadow of evidence to support it. She, of course, blew off steam while stopping.

e. The evidence of the witnesses agrees with these facts.

> "The 'Syracuse' might have been going four to five miles through the water, and by the land three and a half miles." (Lansing, fol. 156.)
>
> "I don't think we were going faster than three miles an hour." (Marshall, fol. 197.)
>
> Drake, the engineer, says it might have been six miles an hour by the land or through the water. He did not know how the tide was, and of course could not tell with what force it beat against her—give it two miles an hour, and that would make her speed four miles only.

f. Coon, the captain of the "Colgate," says they "were not going very fast," (fol. 206). An attempt is made to draw the conclusion that the speed of the "Syracuse" was greater, from his saying that, he was on his bow fifteen minutes, and went there he thought, about Athens shipyard. This estimate of time is valueless. He had *seen the* "*Rip*" before he went forward, (fol. 207,) and the "Rip" was not in sight *ten minutes* before the collision. Rogers' Island, where she first came in sight, is only two miles below.

g. The only witness who pretends to testify to a greater speed, is Shook. His solitary testimony cannot outweigh the evidence of all the other witnesses. The fact that the smoke-stack of the "Syracuse" had been carried away, so that she could not make steam is not disputed, and no one pretends that with a full smoke-stack she would have run more than eight miles an hour through the water, (Hayford, fol. 148). With the smoke-stack gone and the tide against her, four miles an hour is a liberal allowance of speed for her.

Yet the libellant would have her go ten miles an hour; faster than if the tide was not against her, and her smoke-stack was not gone.

III.—There can be no material dispute as to the position of the vessels when the "Rip Van Winkle" changed her course to east.

a. The "Rip" was at, or a little above Brandow's Hollow.

"We were at the Hollow and past the Hollow, and there was where we headed across." (Teason, fol. 85.)

b. The "Joe Johnson" was well over to the west in the channel. With such a tow and such a wind and tide she would not venture too near the flat.

"About 100 feet from the west flats." (Deming, 135.) "Two hundred feet." (Lansing, fol. 158.) "One hundred and fifty feet." (Marshall, 187.)

c. The "Syracuse" had *passed the hawser tier* of the "Joe Johnson," and was *to the eastward of her.*

"She was astern of the 'Joe Johnson' and to the windward of her." (Teason, fol. 80.)

"Tracking right along down after the 'Johnson,' and a little to the windward of her." (*Ibid*, fol. 80.)

"To the eastward of the 'Joe Johnson,' and *just in range of her hawser tier.*" (*Ibid*, fol. 81.)

"A little to the eastward of the 'Joe Johnson.'" (*Ibid*, fol. 82.)

"When I blew my whistle the 'Syracuse' was astern of the 'Joe Johnson,' probably twice or three times her length." (Teason, fol. 87)

"The 'Joe Johnson' was 142 feet long." (Oliver, fol. 137.)

"Her hawser was 75 fathoms, or 450 feet." (Oliver, fol. 123.)

"The river full of lights—all lights away across the river." (Witherwax, fol. 107.)

"We could see between the tows." (Witherwax, fol. 107.)

"We were past her hawser tier, and were just beginning to lap her at that time. * * * when the "Rip" blew her whistle." (Marshall, fol. 188, 189.)

d. The "Arnold" was on the east side of the channel, not quite as far up as the "Joe Johnson."

e. The map of the libellant, purporting to be made by a scale, is open to this criticism, that in all important particulars it departs widely from that scale.

1. The channel is too wide at the buoy by 100 feet, according to his scale.
2. The "Joe Johnson" is nearly twice as long as she should be.
3. Her hawser is only half long enough.
4. Her hawser tier should be one-third longer.
5. The "Arnold's" hawser should be twice as long, and her hawser tier farther out in the river.

6. The "Joe Johnson" should be half as far again from the west shore.
7. The position of the "Syracuse" is contrary to the evidence.

f. The chief error in the map, however, is the course marked for the "Rip Van Winkle."

She was heading "for Hudson Lights." (Libel fol. 8; Libellant's Brief, p. 13.)

Her course, as marked, is 450 feet east of that line.

IV.—In this position of the vessels, an attempt of the "Rip Van Winkle" to pass through them at full speed, without slowing or stopping, was a most dangerous manœuvre. She should bear all the risks of it and all the responsibilty. She was going 17 miles an hour, (Teason, 88), a mile in 3½ minutes, and the distance from there to the buoy was not more than half or three quarters of a mile. The collision took place not above the buoy, but probably below it. (Teason, fol. 73 and 93, 94). "The 'Joe Johnson' was probably half or three-quarters of a mile below the buoy." (Oliver, fol. 124)

Thus the collision was within two minutes at most after the "Rip" sheered to east. That she should plunge at such speed among those boats, seeing as her pilot did that the river was "full of lights—all lights away across the river," convicts her of fault beyond all question.

In the case of the New Jersey, 10 Howard, this Court says, on page 606: "We cannot omit to "remark, before leaving the case, that the pilot "of this vessel was greatly to blame in not having "slackened her speed as he approached the fleet of "river craft which was slowly descending this stretch "of the river at the time it opened to his view The "channel is about half a mile wide at this point, and "there were some seven or eight vessels coming down "—all within a reach of less than two miles, and from "the state of the wind, not in a condition to make effectual manœuvres with a view to avoid immediate "danger. And yet the clear weight of the evidence "is, that the steamboat continued her speed, passing "several of them, which narrowly escaped the danger, "until she reached the sloop in question, at a rate of "from eight to ten knots an hour."

"It is manifest to common sense, that this rate of "speed, under the circumstances stated, exposed these "vessels to unreasonable and unnecessary peril; and "we adopt the remark of the Court in the case of the "'Rose,' (2 Wm. Rob., 3) 'that it may be a matter of "'convenience that steam vessels should proceed with "'great rapidity, but the law will not justify them in "'proceeding with such rapidity, if the property and "'lives of other persons are thereby endangered.'"

In that case, the steamer was running *eight or ten* miles an hour, and without checking her speed, ran into and through a stretch of *two* miles, passing *eight or nine vessels*—the channel being half a mile wide.

In this case the steamer was running *seventeen* miles an hour, and without slacking her speed, ran into and through a stretch of less than one mile, passing 18 vessels, canal boats, barges and steamers, in three clusters—three steamers and fifteen boats in tow, the channel being only 950 feet wide—one-sixth of a mile.

For quick work—for sudden escape from danger, there is nothing so helpless in the water in the night, as a steamer with a tow of boats—dragged along by the steamer. They cannot stop and back without getting into perilous and destructive entanglement. They cannot turn to one side or the other without a similar peril or danger of the tows swinging round by their own momentum. An accident to the towing steamer by collision or otherwise, throws the whole into confusion. Now, these tows have as much right to their course in the river as the lightning passenger boat—the more helpless or crippled the craft the more she must be considered. It is of no possible advantage to the community that a steamer should make the trip between New-York and Albany in eight hours and forty-five minutes, instead of eight hours and fifty minutes. Five minutes is not too much to lose to prevent a sacrifice of life and property. We call this unchecked speed negligence, the crowning negligence, because it underlies, causes, and excuses all that is done *in extremis*, in the prospect of such a peril.

If these boats have forgotten the case of the "New Jersey," it is time they were told that it is still the law. No case was ever more fully argued and carefully considered, in this Court, than this case of Newton and Stebbins.

The only question then that need be considered in the case is, whether the libellant has shown that the "Syracuse" also was in fault.

V.—The principal allegation of fault which the libellant makes against the "Syracuse" is, that she did not keep her course as near to the "Joe Johnson" as she was when the "Rip" sheered, but sheered off to the East, *just as the "Rip" was passing the "Arnold."* (Teason, fols. 51 and 61.)

This claim of hers is of itself so extraordinary a one, that it would need the strongest evidence to sustain it.

It is quite incredible that the pilot of the "Syracuse" should sheer his boat to the east, towards the "Rip," instead of sheering away from her, knowing as he did that both were to pass to the right, having himself answered her single whistle, with a single whistle, to tell her that he knew that both were to pass to the right.

Yet this is what the libellant claims and relies on. Let us see what the evidence is to support this extraordinary claim.

a. There is but one witness who pretends to have seen this sheer, while two who were looking on swear that they did not see it, and three others who must have known if it took place, swear not only that it was not made, but that the "Syracuse" actually sheered to west.

The witness, whose unsupported statement on this point is expected to carry the libellants' case through, is Teason, the pilot of the "Rip Van Winkle."

He swears positively to having seen this sheer. (Teason, fol. 57, 61, 63.)

b. Now this sheer was seen by no one else. Witherwax, who stood at the same wheel with Teason, did not see it. (Fol. 108, 110, 112, 113, 117.)

Even when recalled for the express purpose, after a night's consideration, of swearing that he did see it, he only swears that he saw the "Syracuse" sheer *out, to pass the "Joe Johnson's" hawser tier.* (Fol. 146.)

Seward, the Captain of the "Arnold," also testifies to seeing such a movement of the "Syracuse" to pass the hawser tier (fol. 139); and it is possible that she did make *that* change, though Marshall, the pilot, has no recollection of it. (Fol. 197.) But if that change was made at all, it was made *before the "Rip" whistled.*

"I saw the 'Syracuse' sheer out into the river, I suppose to clear the other tow. * * * Then I looked astern and saw the 'Rip' coming * * * *At that time I heard two whistles*"

(Seward, fols. 139 and 140.)

"We were past her (the 'Joe Johnson') hawser tier and were just beginning to lap her, * * * when the 'Rip' whistled."

(Marshall, fol. 188.)

But the sheer that Teason swears to, was not this. He swears that when he whistled, a mile or three-quarters of a mile below, the "Syracuse" was to east of the "Joe Johnson," and *in range of her hawser tier*, (fols. 81, 82;) that after that, he came up on his course, passed the "Arnold's" hawser tier and passed the "Joe Johnson," and as he says, "*when we got up to the 'Arnold,'* I seen her alter her sheer."

(Teason, fol. 61.)

He passed the "Arnold," he says, perhaps two lengths, before the collision, which makes the sheer that he swears to, take place not 20 seconds before the blow.

That sheer no one but him saw. It is idle to attempt to identify it with the little sheer to pass the hawser tier, of which Seward and Witherwax speak. The libel does not pretend it was the same, but alleges that it was a sudden sheer made after the "Rip" had "passed the 'Arnold' and her tow." (2d amendment to libel, fol. 13.)

c. Lansing and Marshall, the captain and pilot of the "Syracuse," positively deny that she made any such sheer. Lansing says, "I don't think they (the 'Syracuse' and the 'Joe Johnson,') altered any. I don't think they sheered either way from the time I saw the 'Rip,' till they hit. They might possibly have headed a little more to the westward." (Fol. 163.) He also says that the starboard barge was not more than 20 feet from the "Johnson" at the collision, (fol. 168.)

Marshall testifies positively that he did not sheer to east, (fols. 190–91) and gives the reason for it.

Now the "Syracuse" did not take such a sheer as is alleged, without something being done with her wheel to make her sheer. The witnesses on board her, who swear that no such thing was done, are more entitled to credit than those who on other vessels argue that she must have sheered, or else the vessels would not have come together.

d. Coon, the Captain of the "Colgate," did not see such a sheer, (fol. 207), and did see her sheer to the westward, (fol. 208).

Lansing and Marshall, are, themselves, two to one against Teason; but when they are corroborated by a disinterested witness, Coon, and not contradicted by Witherwax and Seward, who should have seen such a sheer, if it was made, the Court can hardly believe Teason alone.

e. Moreover, Teason's story in relation to this sheer, is itself, utterly incredible. He does not pretend to have noticed anything in the course of the "Syracuse," which led him to think that he could not get by her, until he himself was passing the "Arnold." He swears that at that time the "Syracuse" was 300 feet to west of him, (fol. 95), and 300 feet above him; and he pretends, that while he, going at the rate of 17 miles an hour, was going 300 feet up the river, the "Syracuse," which was going about a quarter as fast, went *the same distance* to east. That could not be so. The explanation is, that he was much further to west than he was willing to admit.

f. But it is said that the "Syracuse" did sheer out to pass the hawser tier of the "Johnson;" and that she could not break her sheer.

Now, the only conditions, in which any difficulty in breaking her sheer is sworn to, are that she should be going eight miles an hour, *and should not stop her engine*, (Hayford, fols. 150, 151).

But neither of these elements are in this case. She was *not* going eight miles, and her engine *was* stopped as soon as the whistles blew.

It would be easier to sheer her to west than to east, for the weight of the ice barge, and the wind and tide, would all aid her in going to west. Yet, the libellant does not pretend to have any ground to stand on, unless he can convince the Court that her pilot could and did sheer her to east, but could not sheer her to west.

g. But the circumstances give more powerful testimony than any number of witnesses.

All the witnesses agree that the heavy ice barge would carry the "Syracuse's" stem to starboard, the moment her engine stopped. (Teason, 70; Hayford, 149; Marshall, 190; Coon, 210; Shook, 263; Mull, 275.)

Now, there cannot be a doubt but that the engine of the "Syracuse" was stopped immediately after the whistles were blown.

"The bell rang to slow her, and immediately it came to stop her." (Lansing, fol. 160.)

"Then I went out and saw the 'Rip.'" (*Ibid*, fols. 160, 164.)

"The whistle blowed, and, as soon as a man would naturally have time, the bell rang to slow, and then to stop." (*Ibid*, fol. 173.)

"I rang the bells to stop her; one bell to slow, and one to stop. I took right hold of the bell wire, and pulled them instantly." (Marshall, fol. 189.)

"I did not have to step out of my tracks at all, but pulled the bell immediately I rang the bells to stop the boat instantly, after I blew the whistle." (*Ibid*, fol. 190.)

"After the whistle blew the bell was rung immediately, to slow her, and another to stop. I did it instantly, as soon as ever I could." (Drake, fol. 201.)

"As soon as the whistle was blown, I heard a bell, and another right after it, as soon as they could be pulled. Then I saw the walking beam stop." (Coon, fol. 205.)

These four witnesses cannot be discredited, and their testimony shows beyond a doubt that the "Syracuse" was sheered, not to the east, but to the west.

The heavy barge on the port side, the strong wind from southeast, and the flood tide, must all combine to set the "Syracuse's" bow to the west.

h. Still more conclusive is the position in which the vessels came together.

The "Rip" struck her port forward gangway against the bluff of the bow of the barge, ten feet aft of her stem.

The stem of the barge was fifteen feet aft of the stem of the "Syracuse."

Neither the stem of the "Syracuse," nor that of the barge, was touched.

The "Rip" was, at the time of the collision, heading to the eastward.

"I let the 'Rip' run to the eastward as fast as as I could." (Teason, fol. 61.)

"She crossed our bows." (Marshall, fol. 192.)

Now it is not possible that the "Rip" should be heading to the eastward, and the "Syracuse" also heading to the eastward, and come together without touching the stem of the "Syracuse" or the stem of the barge.

But if the "Syracuse" was heading to the westward, the vessels could come together as they did.

The fact that they did so come together, therefore demonstrates that the "Syracuse" had sheered to the west.

i. If any sheer is to be charged against the "Syracuse," as a fault, it must have been a sheer, so near to the blow as not to allow the "Rip" time to get further to the east. For it is not claimed on the part of the "Rip" that at the time of the blow she was nearer to the east flat than 250 or 300 feet, or nearer to the "Arnold" than 150 feet; while Seward, Captain of the "Arnold," says she was 200 west of him.

"I don't think we could have been off from the east flat not over 250 or 300 feet." (Teason, fol. 71.) "I went off from the 'Arnold' probably 150 feet." (Teason, fol. 57.)

"'Rip' passed us off, I should think 200 feet—may be more." (Seward, fol. 145.)

The "Rip," therefore, had room enough to have avoided the "Syracuse," by going further east, if she had *time enough*; and, therefore, if she had time enough, she should have avoided the collision in that way.

j. This made it necessary to bring the sheer as close as possible to the blow, and accordingly Teason swears:

1. That as soon as he saw that sheer, he whirled his wheel over to port, but *had not time before the blow to get it clear over.*

"The minute I noticed her sheer by her lights, I then hove our wheel aport."

Q. Hard a-port?

A. *I did not get it away over before she hit us.* I got it over as far as I could. I don't think I got our wheel hard over before she came into us," (fol. 89.)

2. That the "Syracuse" at that time was only 300 feet above him in the river.

"When *I first saw her make her sheer*, I should judge she was in the neighborhood of 300 feet" to the northward, (fol. 92 and also fol. 89.)

Now take the fact as sworn to by Oliver and Denning, that when they heard the crash they looked round and saw the "Syracuse" then a length, or 230 feet off from them, and it is demonstrated that at the time when Teason swears he saw the sheer, the "Syracuse" had already passed the hawser tier of the "Joe Johnson," which stretched out 750 feet behind her. (See also the other demonstration of this fact in Point 3, § c.) That being so, the alleged reason for the alleged sheer vanishes.

The testimony of the witnesses who speak of her sheering out to pass the hawser tier, must, therefore, be excluded from consideration; and the evidence of Witherwax, who was looking at her all the time and saw no such sheer, and of Lansing, Marshall and Coon, that there was none, annihilates the unsupported evidence of Teason.

k. The libellant has argued that the "Rip" was so far over to the eastward as to be across the track of the "Arnold" at the time of the collision, basing this argument on the statement of Captain Seward, of the "Arnold," that he stopped his boat to avoid hitting her after the collision.

We submit that if the "Rip" was, as *we say she was*, several hundred feet to west of the "Arnold" at the time of the collision, still under the port helm, which Teason gave her as soon as he saw the danger, her *momentum at the rate of seventeen miles an hour* was abundant to carry her as far to the east as the track of the "Arnold."

But if we suppose that she was at the time of the collision, as the libellant claims, across the "Arnold's" track (which her captain swears was only 40 to 45 feet from the east bank), and heading as the "Rip" was "broad in on the East Flat," (Teason, fol. 90), no power on earth could have kept her *from running on shore.*

Will it be pretended, that with a speed of 17 miles an hour she would not go 50 *feet* after her engine was stopped by the collision?

Here, again, is a demonstration that she was at the time much farther to the west than Teason is willing to admit.

l. The libellant has argued that the "Syracuse" did sheer to the east, because while she passed the hawser tier of the "Joe Johnson" close, within 15 or 20 feet, as her witnesses say, yet Oliver and Denning saw her 200 feet off from them at the crash.

His argument would be a good one, if the collision took place *right abreast of the "Johnson's" pilot house,* in which they stood.

But not a witness puts the place of collision at less than that whole distance *astern* of the pilot-house, which leaves no room whatever for the sheer which the libellant claims.

m. It is very plain that the evidence as to this sheer, when properly translated, means only this: "We thought we were going to get by, and found we could not."

It is very plain, on Teason's evidence, as to what passed when he went to state the case to Mr. Donohue, that he did not then state that he *saw* any sheer, but only argued that the "Syracuse" *must* have sheered. (Page 81, 82, 83.) He says that when Mr. Donohue asked him if he saw the vessel sheer, he "told him she did," not told him he saw her.

The objection raised by the libellant to having Mr. Donohue asked on that point, shows that he was afraid of what the answer would be.

The objection is untenable. The privilege is the client's privilege, and does not extend to the statement of a third party. The privilege is based on the old rule that the party could not be compelled to testify, and has been limited by the change in the law allowing parties to be compelled to testify.

Mitchell's Case, 12 Abbott, Pr. Rep., 249.

And it never extended so as to protect the attorney from disclosing what had been communicated to him by other persons.

In Sparks *vs.* Midleton (1 Keble, 505), the Court of King's Bench ruled that a counsel "should only reveal such things as he either knew before he was of counsel, or *that came to his knowledge since of other persons.*.

It is also settled that an attorney may be asked as to communications to him by his client in the presence of third parties.

(Griffith *vs.* Davis, 5 Barn~~ard~~ & Ad., 532; Shore *vs.* Bedford, 5 Man & Gran., 271; Weeks *vs.* Argent, 16 ~~Moss~~ Mees. & Wels., 816.)

A fortiori, then he may be asked as to communications by third persons in the presence of his client.

But Teason was told that on what he had said a suit would be useless, and he has therefore convinced himself that he saw what he thinks must have taken place. The result is, that he has sworn to an utter impossibility.

The attempt to strengthen him by Witherwax utterly failed. Even when he was recalled, he only testified that he *supposed* the "Syracuse" sheered (fol. 146.) The libellant, on page 19 of his brief, suppresses the words "I suppose."

VI.—The libellant's counsel is driven to admit that at the time of the collision the bows of the "Syracuse" and her barges were to westward. But if this be so, what becomes of his witnesses who swear that they saw no change of her course after she sheered out to pass the hawser tier?

He endeavors to combine the two. But there is not space for both. The "Syracuse" could not have gone 300 feet to the east, and then stopped and headed to west, during the twenty seconds after the "Rip" passed the "Arnold."

The fact that after the collision, the "Syracuse" brushed the fenders of the "Johnson" shows nothing except that she was all the time near the "Joe Johnson."

The "Johnson's" pilot says he saw her a length off, and our witnesses say she was a little astern, which would make her a length off from the pilot house. After the blow she went ahead, and being so close to the "Joe Johnson," she brushed her fenders. But all this shows is that she was, as our witnesses say, close to the "Joe Johnson" as was safe, at the time of the collision.

VII.—It is said that the pilot of the "Syracuse" was in fault for not backing his engine.

But the Court must remember that behind him was the hawser tier of the "Johnson," and that it was his duty as much to avoid that as to avoid the vessels in front of him. Stopping his boat, but not backing, gave the most time and most chance to avoid a collision with all, and was by far the most prudent course to adopt.

The libellant claims that the "Syracuse" was in fault in not porting her helm. But she did go to west. The stoppage of her engine swung her head to west, and that is all that was required of her.

"When I stopped my steamboat, the heft of the barge naturally sheered her some to the westward, and I dared not sheer her rank to the westward, for I should have run on to the 'Johnson's' *hawser* if I done so." (Marshall, 191.) "I noticed our vessel sheering to the westward, as she naturally would, right away when she stopped." (Coon., fol. 208.)

The libellant claims that the single whistle of the "Syracuse" was a guarantee to the "Rip" that she could get by. No such effect can be attributed in law to a whistle.

But if we allow that it had all the force which is claimed for it, what then? There was room for the "Rip" to have got by, if she had gone as far east as she could.

The libellant only claims that she went "300 feet to the eastward of the 'Johnson's' course," and admits that there was 600 to 700 feet between the "Johnson" and the "Arnold." (Brief, p. 2.)

VIII.—It is quite obvious how the collision occurred.

a. Mr. Teason had probably intended to go to west of all the boats before he got up to Brandow's Hollow. However that may be, when he got to the Hollow, or above it, he changed his mind and determined to go between them. He headed across the Reach *at first* (steered inside of the Hudson Foundry lights, (fol. 73); "went well over to the eastward to give them room," (fol. 86); "gave her a good rank sheer, in order to approach the east land, in due time, in order to clear the vessels coming down," (*Ibid*, fol. 88.)

But it is also plain that this sheer did not carry the "Rip" *further east* than she usually went. "When we came to the track *that we usually follow*, I then steadied my boat, (fol. 88); after I steadied I kept my course till I saw the 'Syracuse' make a sheer," (fol. 89.)

"When I got to the Hollow, I followed up *in the usual course.*" (*Ibid*, 101.)

"I steered across the Reach to take my course through them."

Q. That was the usual course?

A. Yes, sir.

Q. Do I understand you to mean that you went to the east of your usual course before you saw she was coming into you, or before you saw that she was sheering on to you?

A. No, sir. I *was going the usual course from the Hollow to the lights.*

Q. At the time she took the sheer?

A. Yes, sir.

(Teason, fol. 102.)

The allegation of the libel is, that she was pursuing the usual course, and was heading for the Foundry Lights, (fol. 8), so swear Dennison, (fol. 136,) and Seward (fol. 140.)
(See Witherwax, fol. 107.)

b. As Teason approached the "Arnold," he found that her hawser tier was hanging off to west of her. This placed him between two dangers. It would not do to go too near the "Arnold's" tow, and he kept as close to the "Joe Johnson" as he could, hoping to get by the "Arnold's" hawser tier and to dodge in between herself and the "Syracuse."

The "Joe Johnson's" master says that when the "Rip" passed him there was hardly room for the "Syracuse" to have gone between them, (Oliver, fol. 127); and all agree that she was going to east when she passed them, showing that up *till that time* she had been further to the west. The fear of hitting the "Arnold's" tow will explain this position of the "Rip," and whether that fear was well or ill-founded makes no difference. If it was ill-founded and a mistake of judgment on Teason's part, he is responsible for it, and not the "Syracuse." If it was well-founded, then he was in fault in placing himself in such a position. He should have waited until the boats above him had passed each other, instead of throwing his boat at full speed among them, hoping to dodge through a narrow and rapidly closing opening.

c. The weight of evidence would seem to be that this fear of his was ill-founded, and that he did not go as far to the east as he might; for while all agree that the distance between the "Arnold" and the "Joe Johnson" was from 500 to 700 feet, no one puts the distance between the "Rip" and the "Joe Johnson" as they passed at more than 300 feet. This is all the libellant claims, (Brief, p. 2.)

It was undoubtedly less than that, for the master of the "Joe Johnson" says she went so near that it would have been "*close work*" for the "Syracuse" to have got through there.

But if we give her 300 feet and add her own breadth, 60 feet, we leave from 140 to 340 feet between her and the "Arnold," which agrees very well with the estimate of the master of the "Arnold"—that she was 200 feet from him when she passed.

And if she had as much room as that, she is responsible beyond a doubt for not going further to the east.

IX.—There are four plain errors in the opinion of the District Court.

a. The Judge says, that the "Rip" "headed for Merino Point." He is mistaken, she headed for the Foundry Lights, at Hudson, or to west of them.

The libel so alleges, (fol. 78,) and such is Teason's evidence, though he wavers somewhat, his bias evidently leading him to swear his course further to the east.

"The usual course is to steer from Brandow's Hollow, east to the westward of the Foundry Lights." Teason (fol. 73,) "was following usual course above Catskill. (Fols 76, 78 and 83.)

Then he says he gave a *rank* sheer to east. (Fol. 88.)

But that only means that he turned quick, not that he went further to east than usual, for (fol. 88.) "when we came to the track *we usually follow*, then I steadied my boat."

Then he kept straight on till he saw the "Syracuse" sheer (fol. 89), and before he altered his wheel he was "*heading about for the lights at Hudson*," (fol. 90,) and is positive that he was running the *usual course*, until he sheered just before collision. (Fols. 101 and 102.) Oliver says the same. (Fol. 125.) Denning says the same thing. (Fol. 135.) So says Seward. (Fol. 140.)

b. The Judge says, "It is claimed by the libellant that the "Syracuse" sheered out to eastward *in order to pass the 'Johnson.'* "

Now, there is not a witness who pretends to allege any such manœuvre on the part of the "Syracuse." The only one that is alleged by them is a sheer to pass, not the "Johnson," *but her hawser tier.* We think it has been demonstrated that, if that sheer was made, it was *before the "Rip" whistled*, and while the vessels were more than a mile apart; and was not a sheer which had the slightest effect upon the collision.

It is not that sheer which Teason has sworn to, but to a sheer only *three hundred feet above the collision.*

Now, aside from all the evidence on this subject, there was no possible reason for the "Syracuse" to sheer still further to east, to pass the "Johnson." She had already passed her hawser tier, which was wider than she, and would have of course passed her as well, without any change whatever. Reason, the testimony and the circumstances all combine to show that there was no such sheer as Judge Shipman spoke of.

c. The Judge finds that the "Rip" "gave both the 'Johnson' and the 'Syracuse' ample room to pass to the westward."

The witnesses who give us estimates on this point are Oliver, Denning, and Teason.

Oliver says the distance between the "Joe Johnson" and the "Rip" was three hundred feet or more. (Fol. 127.) Estimates of distance in feet are very unreliable, and his statement that it would have been *close work* for the "Syracuse" to have passed between them, is far more valuable as testimony. This he repeats. (Fol. 137.)

Denning gives the same estimate of three hundred feet, but thinks the "Syracuse" could have gone between them. (Fol. 131.)

Teason, with all his bias leading him to put this distance as large as possible, only swears to three hundred and fifty feet. (Fol. 60.)

This is all the estimates that are given on this direct point. But there is another estimate given, which bears directly on the point.

When Oliver and Denning heard the crash of the collision, they at once looked round and saw the "Syracuse," and they estimate her distance from them at that time, viz., the time of the blow, as a length of the "Syracuse," or two hundred feet. (Oliver, fol. 129; Denning, fol. 133.)

And this was not two hundred feet abreast of them, for the "Rip" had passed out of their sight before the blow."

Now, this is all the evidence directly on this point.

There are other estimates of other distances; but they are all only estimates, and every witness gives estimates which would leave a large part of the river unaccounted for.

d. The Judge says: "The 'Rip' sheered to east as she passed the 'Arnold's' tow."

This is in direct contradiction to Teason, who swears that he made no change *till he saw the "Syracuse's" sheer.*

X.—The "Syracuse" on her part is shown to have been wholly free from fault.

She had passed the hawser tier of the "Joe Johnson," and was approaching the latter when the whistle of the "Rip" gave notice of her intention to go to the east. Answering it with one whistle, her pilot at once stopped his engine to give the "Rip" as much time as possible to get to the east of his course, and with his wheel and the aid of the heavy barge on his port side, and the wind and tide combined, kept as close to the side of the "Joe Johnson" as was safe. He could not back, because that would bring the "Joe Johnson's" hawser tier in immediate collision with him. He could only do what he did—stop his boat and keep as far to the westward as possible.

If Teason had stopped his boat till the boats above him had passed each other, or if he had even slowed her, to give himself time to get her far enough to east, there could have been no collision.

He did neither, but went on at full speed, hoping to escape by his speed alone.

His recklessness will be properly visited by this Court, by a decree affirming the decision of the Circuit Court.

R. D. BENEDICT,

Counsel for Appellees.

U. S. Circuit Court.

SOUTHERN DISTRICT.

J. W. HANCOX, OWNER OF THE STEAMBOAT RIP VAN WINKLE.

vs.

THE STEAMBOAT SYRACUSE.

This was an appeal by the owners of the "Syracuse," from a decree made by Judge Shipman, in the District Court, holding her liable for the damages caused by a collision with the passenger steamer "Rip Van Winkle."

NELSON, C. J.--

The collision in this case occurred on the Hudson River, on the morning of the 16th of May, 1866, between one and two o'clock, opposite the buoy situated on the west bank of what is called Percy's Reach, near the City of Hudson, between a tow of the steamer "Syracuse" and the "Rip Van Winkle." The "Syracuse" was descending this reach of the river on the west side, with two tows lashed to her sides; the "Rip Van Winkle" was ascending on her usual trip from New-York to Troy. This vessel came up on the west side to a point called Brandow's Hollow, the usual place for taking a sheer to the eastern side; and seeing ahead of her the lights of several vessels in the river, on both shores, one whistle was blown to indicate that she intended to pass the vessels on the west side to the right, which was answered by the "Syracuse," and also by the "Joe Johnson," another steamer, with several tows, descending ahead of the "Syracuse;" and after blowing the whistle and receiving the response, she immediately took a course diagonally across the river toward the eastern shore, and while on this course across the river, encountered the barge on the larboard side of the "Syracuse," resulting in serious damage to the "Rip Van Winkle." The libel places the fault of the "Syracuse" exclusively on the fact that the course of the "Rip Van Winkle" was such that there was abundant room left in the channel, between her and the west shore, for the "Syracuse" with her two tows to have passed down safely; but that she altered her course by a sudden sheer into the river, and thereby caused the collision.

We have looked into the proofs on this point with some care, and after studying the facts, are compelled to the conclusion that the libellant has failed to sustain this position. The proofs show that the "Joe Johnson," which was ahead of the "Syracuse," had a long hawser tow; and that before the "Rip Van Winkle" blew her whistle to pass to the right, and was answered by the "Syracuse," she, the "Syracuse," had passed this hawser tow on the east, and had lapped some few feet on the tug or steamer, and was some fifteen to twenty feet to the east of her in the channel; and we have the testimony of Lansing, captain of the "Syracuse," Marshall, the pilot, Drake, the engineer, and Coon, on one of the tows of the "Syracuse," that immediately on hearing the whistle of the "Rip Van Winkle, and answering it, the bells of the "Syracuse" were rung to slow, and to stop, which were instantly obeyed, and the vessel checked in her course; and all agree that the stopping of the vessel had the effect to turn her head to the west, for the reason, that the barge on her

U. S. Circuit Court.

SOUTHERN DISTRICT.

J. W. HANCOX, OWNER OF THE STEAMBOAT RIP VAN WINKLE.

vs.

THE STEAMBOAT SYRACUSE.

This was an appeal by the owners of the "Syracuse," from a decree made by Judge Shipman, in the District Court, holding her liable for the damages caused by a collision with the passenger steamer "Rip Van Winkle."

NELSON, C. J.—

The collision in this case occurred on the Hudson River, on the morning of the 16th of May, 1866, between one and two o'clock, opposite the buoy situated on the west bank of what is called Percy's Reach, near the City of Hudson, between a tow of the steamer "Syracuse" and the "Rip Van Winkle." The "Syracuse" was descending this reach of the river on the west side, with two tows lashed to her sides; the "Rip Van Winkle" was ascending on her usual trip from New-York to Troy. This vessel came up on the west side to a point called Brandow's Hollow, the usual place for taking a sheer to the eastern side; and seeing ahead of her the lights of several vessels in the river, on both shores, one whistle was blown to indicate that she intended to pass the vessels on the west side to the right, which was answered by the "Syracuse," and also by the "Joe Johnson," another steamer, with several tows, descending ahead of the "Syracuse;" and after blowing the whistle and receiving the response, she immediately took a course diagonally across the river toward the eastern shore, and while on this course across the river, encountered the barge on the larboard side of the "Syracuse," resulting in serious damage to the "Rip Van Winkle." The libel places the fault of the "Syracuse" exclusively on the fact that the course of the "Rip Van Winkle" was such that there was abundant room left in the channel, between her and the west shore, for the "Syracuse" with her two tows to have passed down safely; but that she altered her course by a sudden sheer into the river, and thereby caused the collision.

We have looked into the proofs on this point with some care, and after studying the facts, are compelled to the conclusion that the libellant has failed to sustain this position. The proofs show that the "Joe Johnson," which was ahead of the "Syracuse," had a long hawser tow; and that before the "Rip Van Winkle" blew her whistle to pass to the right, and was answered by the "Syracuse," she, the "Syracuse," had passed this hawser tow on the east, and had lapped some few feet on the tug or steamer, and was some fifteen to twenty feet to the east of her in the channel; and we have the testimony of Lansing, captain of the "Syracuse," Marshall, the pilot, Drake, the engineer, and Coon, on one of the tows of the "Syracuse," that immediately on hearing the whistle of the "Rip Van Winkle, and answering it, the bells of the "Syracuse" were rung to slow, and to stop, which were instantly obeyed, and the vessel checked in her course; and all agree that the stopping of the vessel had the effect to turn her head to the west, for the reason, that the barge on her larboard side, was much heavier laden, and drew a greater depth of water than the one on her starboard. This not only repels the idea of a sheer into the "Rip Van Winkle," but was the best movement she could make. It is also a fact, not in dispute, that if the above view of the case is maintainable, there was abundance of room in the channel for the "Rip Van Winkle" to have passed in safety; and, therefore, she must have been nearer the west shore than she supposed. Besides this evidence that the "Syracuse" did not make the sheer into the river as charged, the proofs show that the "Rip Van Winkle" was clearly in fault in keeping up her high rate of speed while crossing the river at this Reach, in the midst of the vessels which at this time occupied it. There were two tugs, with tows, on the western side, and one nearly opposite on the eastern. The morning was somewhat dark, with occasional starlight; and one of the pilots on board the "Rip Van Winkle," when he first saw the lights, says it appeared as if the river was filled with vessels, and they became the subject of conversation between him and the other pilot. And yet, the pilot in charge of the navigation of the vessel admits that he did not slacken his speed, but crossed among these vessels at his usual rate. That rate was seventeen miles the hour. We cannot avoid referring to the confused and painfully tedious mode of taking the evidence by questions and answers in the case, and not by way of narrative. The folio has been four-fold what it would otherwise have been, and the surplus is worse than useless. We trust that this most inconvenient and embarrassing mode of taking testimony will be corrected by the rules recently adopted, both by the District and Circuit Courts, on the subject. These observations are not intended to apply any more to the present case than to most of the appeals before me for some time past.

The decree below reversed, and decree dismissing the libel.

15

RS,
TS,

15

t.
1
3
3
4
5
6
Answer of New Jersey Rail
Answer of William Myers *et als* ....

larboard side, was much heavier laden, and drew a greater depth of water than the one on her starboard. This not only repels the idea of a sheer into the "Rip Van Winkle," but was the best movement she could make. It is also a fact, not in dispute, that if the above view of the case is maintainable, there was abundance of room in the channel for the "Rip Van Winkle" to have passed in safety; and, therefore, she must have been nearer the west shore than she supposed. Besides this evidence that the "Syracuse" did not make the sheer into the river as charged, the proofs show that the "Rip Van Winkle" was clearly in fault in keeping up her high rate of speed while crossing the river at this Reach, in the midst of the vessels which at this time occupied it. There were two tugs, with tows, on the western side, and one nearly opposite on the eastern. The morning was somewhat dark, with occasional starlight; and one of the pilots on board the "Rip Van Winkle," when he first saw the lights, says it appeared as if the river was filled with vessels, and they became the subject of conversation between him and the other pilot. And yet, the pilot in charge of the navigation of the vessel admits that he did not slacken his speed, but crossed among these vessels at his usual rate. That rate was seventeen miles the hour. We cannot avoid referring to the confused and painfully tedious mode of taking the evidence by questions and answers in the case, and not by way of narrative. The folio has been four fold what it would otherwise have been, and the surplus is worse than useless. We trust that this most inconvenient and embarrassing mode of taking testimony will be corrected by the rules recently adopted, both by the District and Circuit Courts, on the subject. These observations are not intended to apply any more to the present case than to most of the appeals before me for some time past.

The decree below reversed, and decree dismissing the libel.

Mr Horn –

1 Then, Rich. had great opportunity
being fully competent – doing
and leave – bow right – [illegible]
sequence – look – pattern –
[illegible] – [illegible]
[illegible] – [illegible]
signal – answering [illegible] 4 p.s.
point below –
They made not port –
Don't pretend they did if
pause put them on the
low – handsome or [illegible]

There does the collision
occur – We say to eastward
~~east~~ east of the centre of the channel
Fol 131 at bottom p 21
137 Fol – p ~~24~~ 44
Folio 139 – ~~[illegible]~~ 46 – Folio
145 – 47
Fol 44 p 28
Folio 60 – p 17